3/14/78

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THE PRESIDENT'S SCHEDULE

Tuesday - March 14, 1978

8:15 Dr. Zbigniew Brzezinski - The Oval Office.

8:45 Mr. Frank Moore - The Oval Office.

10:00 Mr. Jody Powell - The Oval Office.

1:30 (20 min.) Mr. James McIntyre - The Oval Office.

2:00 (20 min.) Vice President Walter F. Mondale, Admiral Stansfield Turner, Dr. Zbigniew Brzezinski and Mr. Hamilton Jordan - The Oval Office.

THE WHITE HOUSE
WASHINGTON

March 14, 1978

Jody Powell

The attached was returned in the President's outbox. It is forwarded to you for your information.

Rick Hutcheson

RE: CALL TO DICK STROUT

THE WHITE HOUSE
WASHINGTON

	FOR STAFFING
	FOR INFORMATION
✓	FROM PRESIDENT'S OUTBOX
	LOG IN/TO PRESIDENT TODAY
	IMMEDIATE TURNAROUND

ACTION	FYI	
		MONDALE
		COSTANZA
		EIZENSTAT
		JORDAN
		LIPSHUTZ
		MOORE
✓		POWELL
		WATSON
		McINTYRE
		SCHULTZE

	ENROLLED BILL
	AGENCY REPORT
	CAB DECISION
	EXECUTIVE ORDER

Comments due to Carp/Huron within 48 hours; due to Staff Secretary next day

	ARAGON
	BOURNE
	BRZEZINSKI
	BUTLER
	CARP
	H. CARTER
	CLOUGH
	FALLOWS
	FIRST LADY
	HARDEN
	HUTCHESON
	JAGODA
	GAMMILL

	KRAFT
	LINDER
	MITCHELL
	MOE
	PETERSON
	PETTIGREW
	POSTON
	PRESS
	SCHLESINGER
	SCHNEIDERS
	STRAUSS
	VOORDE
	WARREN

Jody done J

THE PRESIDENT HAS SEEN.

THE WHITE HOUSE

WASHINGTON

March 14, 1978

MEMORANDUM FOR THE PRESIDENT

FROM: Jody Powell JP

I suggest that you call Richard (Dick) Strout, the "TRB" of The New Republic and long-time writer for The Christian Science Monitor, who is being honored on his 80th birthday at the Monitor building.

The call should be placed sometime shortly after 2:30 p.m., to 785-4400. The operator should ask for Godfrey Sperling, who would then get Strout to the phone.

I have attached two articles on Strout from recent days. Also attached is an underlined portion of a recent Strout column which you could note, thus showing that you do read his column.

He is extremely well known and well liked in the Washington area, has been more favorable than most to us, and I think a brief call of congratulations would be most welcome and appropriate.

Our own grey eminence.

TRB at Eighty

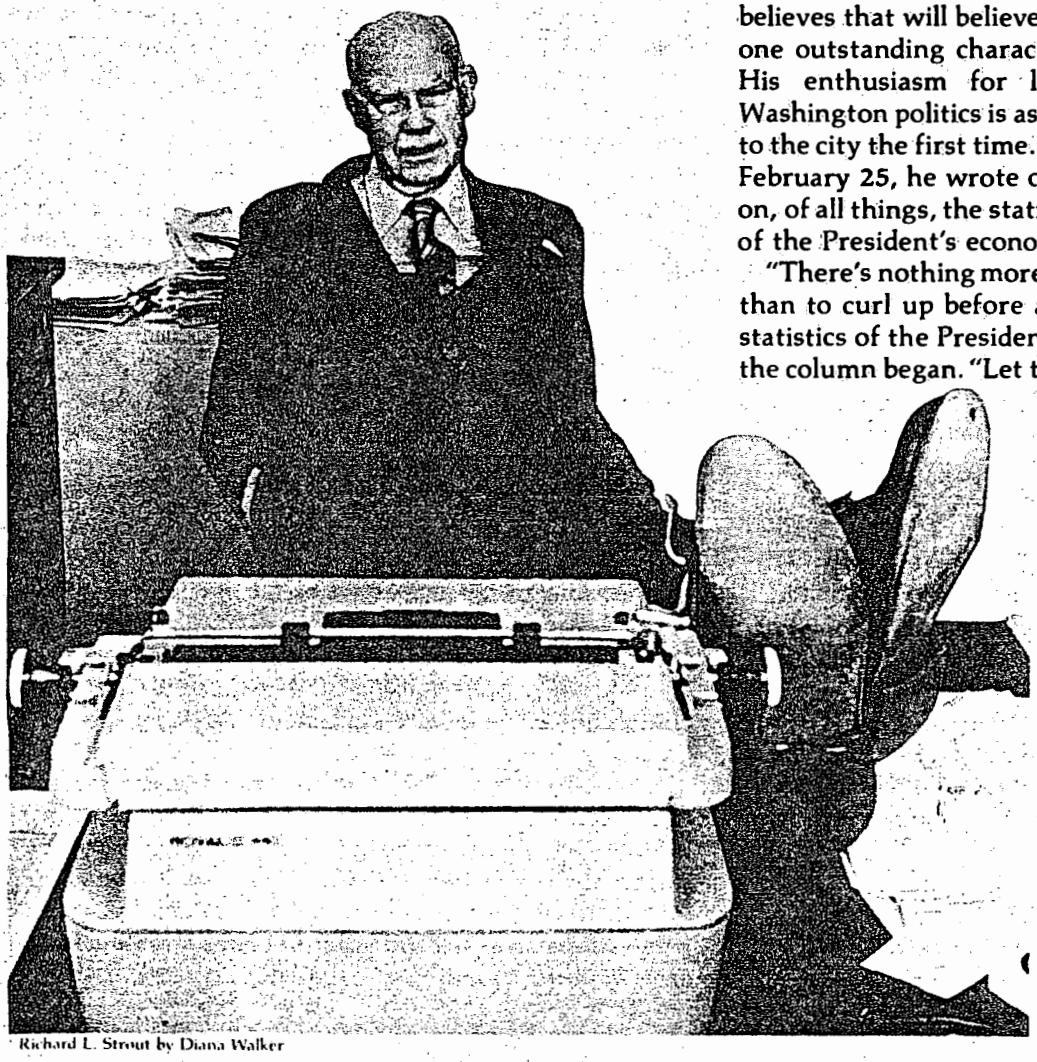
More than a half century ago a young and eager newspaperman arrived in Washington. At about this time Bruce Bliven, then editor of *The New Republic*, was taking one of his weekly subway rides from his office in Manhattan (where *TNR* was then published) to Brooklyn to deliver copy to the printer. Bliven had in his pocket a new political column from Frank R. Kent, a Washington correspondent of *The Baltimore Sun*. The column was to be anonymous and Bliven had puzzled over how to sign it. As he rode the lurching train and pondered his problem, his eyes fell on a placard bearing the subway name—BRT, for Brooklyn Rapid Transit. Bliven reversed the initials and signed the new column TRB. It has been a fixture in this journal ever since. Today it is one of the most widely read and respected columns of opinion in America, and is reprinted in 60 newspapers.

Frank Kent was a fighting liberal in those days. After all, he fought Prohibition and he regularly attacked Calvin Coolidge. He was a slashing writer who believed that nearly all government was bad and all bureaucrats were miserable sinners. When Franklin Roosevelt reached Washington, Kent, in the *Sun*, became one of the New Deal's most acid critics, as might be expected of a good friend of Henry Mencken.

Other writers also were called in to contribute the TRB column. Kenneth Crawford, later a columnist for *Newsweek*, was one of the notable contributors in the late 1930s and early 1940s. Then, in 1943, the young man who had left New England for Washington about the time Bliven launched the column tried his hand. It has been his ever since, except for times off for vacation, for travel and for covering the Normandy invasion.

Every editor knows that the enthusiasm and imagination of youth make a newspaper or magazine sparkle. Richard L. Strout, who writes TRB every week on long sheets of white paper, is that youthful person. His long legs propel him about Washington every day with a speed that many of his colleagues find exhausting. Few can match his ability to digest masses of government documents and to see through every false argument. There is a report, obviously false, that Dick Strout is eighty years old this month. As the Duke of Wellington, standing in full dress uniform, said when someone addressed him as Mr. Smith: "Sir, anyone who believes that will believe anything." If Dick Strout has one outstanding characteristic it is his youthfulness. His enthusiasm for life and for the drama of Washington politics is as alive as it was the day he came to the city the first time. Just last month, in the issue of February 25, he wrote one of his sprightliest columns on, of all things, the statistics he, and he alone, dug out of the President's economic report.

"There's nothing more agreeable on a winter evening than to curl up before a good fire with the tables of statistics of the President's Annual Economic Report," the column began. "Let the gale howl. Let the snow fall. I have here Table B-28." That beginning might have sent many of his readers out into the snow for a breath of fresh air. But, knowing TRB, the majority must have kept on reading. There followed a dramatic and entertaining interpretation of those figures in human terms. Dick Strout did not see the dull statistics. He saw the human beings, the farmers, the workers, the blacks, the women, whose biographies were encompassed in those figures. He found sex, humor, sadness and hope in what he read. Did any other reporter find so much and report it with



Richard L. Strout by Diana Walker

such style?

One day early in the Nixon administration, John Ehrlichman invited Strout to his office to ask for advice. Ehrlichman is a Christian Scientist who had come to appreciate Strout's factual reporting in *The Christian Science Monitor*. Strout has been working for the *Monitor* since 1921 and has been a member of its Washington bureau since 1923. He is a reporter on the *Monitor*, a commentator in *The New Republic*. Perhaps Ehrlichman did not know of the second Strout. He asked his gangling visitor with the somber eyes and bushy eyebrows what he thought the Nixon administration should make its first goal. Why, to build the kind of social democracy and equality that one finds, for example, in Sweden, Strout replied, confidently. Needless to say, the interview was short and it was the only time the Nixon administration sought Strout's advice.

Later, when he was covering Watergate, other reporters asked Strout how it compared with Teapot Dome, his first big Washington story. During both investigations, Strout wrote, many readers charged that the press was "carrying things too far." Many voters, he said, "shrugged and said both parties were alike and it was all just politics." But there was a crucial difference between the two scandals, he said in one TRB column. Watergate was "more disturbing and dangerous" than Teapot Dome because it was "a special kind of corruption without greed. No sex, no dollars. Just power. It doesn't strike at oil leases, it strikes at democracy." Unlike some who have seen the same sort of argument or event time and again Strout is never blasé about the story he is covering. He sees the drama every time and reports it in a way that makes it come alive to the reader.

Long before Johnson and Nixon, Strout expressed concern about the growth of presidential power. As he once said, "there's a feeling that once you sleep in Lincoln's bed, you become deified. It's a dangerous thing." He is convinced that the presidential system is structurally muscle-bound, and he has long believed that the parliamentary system is both more effective and more responsive to the people's needs. No amount of argument has swayed him from that conviction, nor has he been persuaded that it is idle to think the United States will move from the presidential to the parliamentary system.

Another campaign of his that failed was against the televising of presidential news conferences. In 1954, when parts of the Eisenhower conference first were opened for television, Strout wrote an unusual signed article for *The New Republic*, arguing that verbatim recording of a press conference "turns what has been an extremely handy, carefully evolved, semiofficial and unique contrivance into a theatrical performance. The press conference becomes a show. Its informal, easy-going nature is changed into a self-conscious half-hour broadcast." He argued that the informal mood that helped make it possible to pry out information would be lost "if each reporter knows that his boss, the world and his wife will listen to what he is about to say." Now there are as many prima donnas in the press as in the United States Senate. But to argue against television's intrusion was to try to turn back the tide.

Nevertheless, Strout was right about what television would do to press conferences and to the press. Some of FDR's press conferences lasted five or ten minutes, some forty-five minutes or an hour, depending upon the questions and the news developments of the week. Now a presidential conference must fit into television's rigid schedule and appearances often are more important than substance. On television, a President's every word is guarded; informality and give-and-take are held to a minimum, as Strout feared. Even in the Senate debate has degenerated because a Senator would rather use his oratorical skills to obtain a half minute on television than to explore an issue in floor debate. "The communicating medium is television, not the ornate Senate chamber," Strout has written.

Where some writers make a complex subject more complex and even dull, Strout with his marvelous light touch and clarity engages the reader's attention. The reader quickly senses Strout's sturdy principles. His convictions have never led him to color a news story. But these convictions are strongly expressed in TRB. Today there is no more respected writer in Washington, none with more warm friends. His views have never been more pertinent or more up to date than now.

Carroll Kilpatrick

Carroll Kilpatrick recently retired as reporter and White House correspondent for *The Washington Post*.

White House Watch

In Jody's Shop (I)

One of Jody Powell's major public relations triumphs since he went to work for Jimmy Carter in Georgia in 1969 has been in getting journalists to refer to him and think of him as Jody. The only known exceptions in Washington are the editors of the Congressional Directory, who list him as Joseph L. Powell, and *New York Times* columnist William Safire, who identifies the President's press secretary variously as Joseph Lester Powell and J. Lester Powell and may be expected any

TRB

from Washington
March 4, 1978

Disasters Great and Small

I'd like to clear out my bottom drawer on a number of subjects. First, a serious one: SALT.

The theory is that at some point soon President Carter will present the Senate with a new Strategic Arms Limitation Treaty, SALT II, to set beside the one Richard Nixon got passed. For what it's worth let me say that I do not think the Senate in its present mood would give a two-thirds majority to any treaty with the Soviet Union, on any subject, particularly on arms limitation. The reasons are two, institutional and ideological.

The two-thirds requirement for passing a treaty is, I believe, one of the most dangerous requirements in the Constitution. The Founding Fathers' idea of democracy was based partly on property, and they also thought the Senate should be an elitist body picked by legislatures, not by voters. The House has no part in the treaty-making. Partisans and zealots can get a Senate one-third-plus-one minority on almost any controversial subject. In 1920 three-fourths of the Senate at all times wanted some sort of a League, but could never agree on a specific league. Again, the fight to join the World Court started in the Senate in 1925; after various vicissitudes it came to a vote in January 1933: the vote was 52 to 36 for the court, a majority of 16. So, of course, it was defeated. It required a *two-thirds majority*, and this was seven votes short.

Ideologically, the battle against SALT II began with the confirmation fight over presidential negotiator Paul C. Warnke, considered too soft by the hawks. About that time Melvin Laird published his piece in *The Readers' Digest* "Arms Control: The Russians Are Cheating!" Senate hawks like Scoop Jackson are ready to swoop down on any treaty as on a stray lamb, and Paul Nitze, spokesman of the so-called Committee on the Present Danger, is already declaring this treaty a danger, though it hasn't been written yet. According to the *Washington Post*'s Moscow correspondent, Kevin Klose (Feb. 12) the Soviets are expressing "deep concern" over slow progress on SALT. They have reason, I think. If Richard Nixon were brought back and put in the White House, he might reassure the hawks; I don't think any Democrat could do it.

I don't set the above judgments down flippantly. I think Russia and the US are hell-bent on a nuclear confrontation; I agree with Jimmy Carter who said that the lack of a second SALT agreement would produce "ultimate disaster" and that heightening the arms race means increasing the chance of nuclear war. Exactly. But how can you get a Senate two-thirds SALT treaty majority? It would probably be better to propose no treaty at all than to have it end like the World Court fight in 1933—a majority for it, but 7 votes short of two-thrids.

The so-called "Haldeman revelations" came and went, and left Washington almost unchanged. It was like a city going to bed with a weather warning of "two to four inches of snow" and looking out next morning on a clear landscape. It presented novel problems for journalists and a new discovery of how volatile news is, as a merchandisable commodity. *The New York Times* thought it had everything well bottled up and took elaborate precautions to keep the secret with a syndicate of 30 newspapers, only to have the *Washington Post* (not in the syndicate) impertinently produce its own unauthorized summary. This caused confusion for the publishers but didn't raise the quality of the product which was padded, unreliable and tawdry.

Newsweek, amusingly enough, got scooped by the *Post*, which has the same owner, Katharine Graham, and raised its price to a dollar and a quarter on the strength of a 20-page supplement. Under oath, on the witness stand, Haldeman said he had no knowledge of things which he now "speculates" on—Nixon initiated the Watergate break in, Nixon helped erase the tapes, Nixon instituted the bugging of columnist Joe Kraft's Georgetown home. There is the dubious yarn, too, of the Russians almost A-bombing China. It is pretty hard to swear you don't know about some of these matters and later make a marketable book of them. But Haldeman succeeds pretty well and may make half a million from jail.

Another story that has titillated Washington in the past week is Hamilton Jordan and the spit-drink. As a

(continued on page 42)

"Hollywood Squares," with the addition of simulated prison bars encasing each cubicle. The contestant will pick, say, Jeb Magruder, who will be asked a question such as "Did Nixon have prior knowledge of the break-in?" If Magruder says "Yes," the contestant has the choice of agreeing or not. In either case—and here's the new wrinkle—the decision is not left to off-stage judges, but to the other panelists all of whom argue furiously (thus the bars) for or against Magruder's answer. The show never gets beyond one question per week, and the contestant automatically wins a set of flatware from the Michael C. Fina Co., and a contract for a book on his experience.

c) "Meet Gordon Liddy"—Modeled on "Meet the Press," the difference being that Liddy is the guest newsmaker every week, and the journalists simply try to make him talk. Often Liddy will not say anything. Sometimes he speaks only in German aphorisms; sometimes he doesn't show up. When he does talk the idea is to trick him into answering such questions as: "Did Nixon have prior knowledge of the break-in?" (If journalists get bored with this format, they can try to make Liddy laugh, but this is not encouraged.)

Movies: "Rashogate" (9 hrs., 45 min.)—37 people and things present 74 versions of the same event. Most unusual is the surrealistic testimony of the keyhole at DNC headquarters: the mixed feelings of personal violation, unwitting complicity, etc. Starring Marlon Brando and Claire Bloom, with Robert Redford and Dustin Hoffman as themselves. Introducing Richard Kleindienst as Egil Krogh.

Theater (musical): "Throat"—opens with the John Mitchellair singers behind Leon Jaworski belting the unforgettable tune from "Mame":

Who took the wind right out of the CREEP?
Throat!
Whose knowledge travelled widely and deep?
Throat!

Theater (off off-Broadway): "Water at the Gate"—symbolic drama about two allegorical characters representing Justice and Royalties who come before a palace protected by smoking guns and stone walls. Curtain falls with Jason Robarbs face-down on the floor, asking Hal Holbrook, or no one in particular, "Did Nixon have prior knowledge of the break-in?"

Miscellaneous: "Abplanalp"—a Parker Bros. game for the entire family; "Die Wassergaeter," an opera based on "Götterdämmerung," in which Ziegler and Rebozo sing the 18½ minute aria *(con segretti)*: "Hat Nixon den Einbruch vorher zur Kenntnis genommen?"; the National Watergate Library; the National Watergate Scholarship Fund; a perfume—Eau de la Porte; an after-shave lotion—Aquaporte; the National Watergate Monument—a rosewood statue of a 50 ft. high stool pigeon with General Haig sitting on top of it; a comic strip hero called Halde Man who fights crime and Communists with the aid of his sidekicks Ehrlich Man and Chuck, and has the power to speak out of both sides of his mouth simultaneously while pocketing a bundle.

Last and never least, the press has a responsibility to keep Watergate alive and tingling. One way—which is already done—is to make the most of every Watergate document; vying over publication rights, scooping competitors, noting minute discrepancies from account to account, as one would with versions of the Gospel. The other—which has also already begun—is to belittle the whole Watergate craze and to scorn the crooks, liars and fast-buck artists now cashing in on it. By doing both with equal vigor, and continually, newsmen can make sure that the public will never be deprived of any aspect of this amazing tale.

Roger Rosenblatt

TRB, *from page three*

journalist it interests me because public figures have little recourse against gossip columnists in America, where freedom of the press is uniquely guaranteed by the First Amendment. I don't know who's right in the Jordan incident. The *Washington Post*, which is becoming the Walter Winchell of journalism, carried a story by its high-jinks Sunday gossip, Rudy Maxa, describing an alleged dispute in a singles bar here, with Jordan spitting his drink down a woman's blouse. Jordan denies it; he was accompanied by two friends who deny it, too. The White House issued a 33-page rebuttal, including a 24-page statement by the bartender, one of the oddest documents in official life. Maxa says he has confirmation, too. Jordan, who is separated from his wife, has an enhanced White House role, and has recently become a kind of unofficial chief of staff.

Under similar circumstances in England this incident very likely would produce a libel suit on which Hamilton Jordan would stand or fall. It is the protection of public figures. But the Supreme Court (*New York Times* vs. *Sullivan*: 1964) ruled that public figures here, with some exceptions, do not have this recourse; they must bear what is said about them however hateful, unless malice aforethought and prevarication are positively proved. Journalistic freedom of speech is admired by every American reporter, and it is fine to work in Washington, the most open capital in the world. Yet, as a reporter, I worry. Freedom of speech carries corresponding responsibilities; a precious liberty that is abused may be taken away.

Note: I find in my lower drawer a final item: scientists report "an 11-degree drop" in the sun's surface temperature last year, the first ever recorded. This would cool off a lot of things if continued.

THE WHITE HOUSE
WASHINGTON

3-14-78

Stu - Tim

Set up early
meetng re
farm policy

F C

Frank
F

THE WHITE HOUSE

WASHINGTON

March 14, 1978

MEMORANDUM FOR THE PRESIDENT

FROM: FRANK MOORE F.M.

As I told you, Senator Baker talked to former President Ford last night. He did not ask Ford to call people specifically but gave him the undecideds--Bellmon and Brooke.

I think you should specifically ask Ford to call these Senators today. Bellmon and Brooke just went on a leadership understanding. Baker is encouraged by this. I have also heard rumor that Brooke is going on "Good Morning America" tomorrow to announce for the treaties--first to say why he thinks the treaties are bad and then to announce for them because he supports the President.

He will call
Bellmon - Schweiker
Heinz - Brooke -

THE PRESIDENT HAS SEEN

C

THE WHITE HOUSE

WASHINGTON

March 14, 1978

MEMORANDUM FOR THE PRESIDENT

FROM: FRANK MOORE FM.

SUBJECT: PANAMA

I talked with Sen. Zorinsky. We still cannot count on him. Sol Linowitz is working on his rich relative in Nebraska, and he has talked to Zorinsky's wife; she is for the treaties. Secretary Brown, General Jones, and the State Department lawyer met with Zorinsky today. Kissinger is calling him. It is my gut feeling that Zorinsky will announce tonight or tomorrow morning that he is voting against the treaties. His office was loaded with Nebraska TV while I was waiting on him today.

The Speaker is best friends with Brooke's financial chairman, who is sponsoring the fundraiser for him here tonight. The Speaker told me he would deliver the "package" in the morning.

I talked with DeConcini. He said that he is anixous to talk to the press after he meets with you tomorrow. I will talk to Jody about this and arrange for him to have plenty of press.

I am asking Sam Nunn to talk with Hatfield when he gets in. Brown - Gen Jones meet with Hatfield 10:00 tomorrow.
Bellmon is dodging most of the contacts we have instigated.

Wendell Ford is having his statement against the treaties typed in his office right now. He will probably call you tonight to tell you of his decision and will announce it tomorrow at 10:00 am.

1400

THE WHITE HOUSE
WASHINGTON

March 14, 1978

The First Lady

The attached was returned in the President's outbox today and is forwarded to you for appropriate handling.

Rick Hutcheson

RE: DINNER WITH MONDALES AND JOHN MCPHEE

THE WHITE HOUSE
WASHINGTON

	FOR STAFFING
	FOR INFORMATION
/	FROM PRESIDENT'S OUTBOX
	LOG IN/TO PRESIDENT TODAY
	IMMEDIATE TURNAROUND

ACTION	FYI	
		MONDALE
		COSTANZA
		EIZENSTAT
		JORDAN
		LIPSHUTZ
		MOORE
		POWELL
		WATSON
		McINTYRE
		SCHULTZE

	ENROLLED BILL
	AGENCY REPORT
	CAB DECISION
	EXECUTIVE ORDER

Comments due to Carp/Huron within 48 hours; due to Staff Secretary next day

	ARAGON
	BOURNE
	BRZEZINSKI
	BUTLER
	CARP
	H. CARTER
	CLOUGH
	FALLOWS
/	FIRST LADY
	HARDEN
	HUTCHESON
	JAGODA
	GAMMILL

	KRAFT
	LINDER
	MITCHELL
	MOE
	PETERSON
	PETTIGREW
	POSTON
	PRESS
	SCHLESINGER
	SCHNEIDERS
	STRAUSS
	VOORDE
	WARREN

Ros -
see me
J

THE VICE PRESIDENT'S HOUSE
WASHINGTON, D.C. 20501

March 13th

Dear Jimmy—

As my leader in many ways, you've led me into many things, including a new interest in John McPhee.

Fritz and I want to invite him to dinner sometime in May. Would it be pleasant for you and Rosalynn to join us, or just another chore?

Sincerely yours,
Joan

THE WHITE HOUSE
WASHINGTON

March 14, 1978

Jim McIntyre

The attached was returned in the President's outbox. It is forwarded to you for appropriate handling.

Rick Hutcheson

cc: Stu Eizenstat
Bob Lipshutz

RE: COMPUTERIZED MATCHING

THE WHITE HOUSE
WASHINGTON

	FOR STAFFING
	FOR INFORMATION
✓	FROM PRESIDENT'S OUTBOX
	LOG IN/TO PRESIDENT TODAY
	IMMEDIATE TURNAROUND

ACTION	FYI	
		MONDALE
		COSTANZA
	✓	EIZENSTAT
		JORDAN
	✓	LIPSHUTZ
		MOORE
		POWELL
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✓		McINTYRE
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		LINDER
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		PETERSON
		PETTIGREW
		POSTON
		PRESS
		SCHLESINGER
		SCHNEIDERS
		STRAUSS
		VOORDE
		WARREN

THE WHITE HOUSE
WASHINGTON

3/13/78

Mr. President:

No staff objections received.

A note from Lipshutz is attached, concurring with OMB.

Rick

THE PRESIDENT HAS SEEN.

Jim
J

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

MAR 10 1978

MEMORANDUM FOR THE PRESIDENT

FROM: JAMES T. McINTYRE

SUBJECT: Computerized Matching Programs

Secretary Califano has initiated several programs matching computer tapes to find common characteristics. One program matched HEW's personnel files with tapes acquired from the States which contained information on the recipients of benefits under the Aid for Families with Dependent Children (AFDC) program. The purpose was to identify probable illegal recipients. Another program, still in progress, matches the AFDC tape with the tapes on virtually all Executive branch personnel. This program, called Project Match, was approved by the Office of Management and Budget following complaints arising from privacy concerns. Our action was limited to the specifics of Project Match and was authorized by our statutorily assigned functions under the Privacy Act.

Because of the privacy concerns expressed, we have agreed to lead a small and quick (30-day) effort to develop an Administration position on these programs and to develop some guidelines for them. The privacy concerns include:

- the use of personal information for different purposes than those for which individuals were told the information was collected;
- potentially stigmatizing federal employees (in those programs) by the mere incident of a "match";
- indiscriminate extensions of these matching programs into areas of greater personal privacy expectations, e.g., tax information or political activities; and
- the absence of any administration guidelines or safeguards for these programs to ensure maximum privacy security.

Chairman Richardson Preyer of the House Subcommittee on Government Information and Individual Rights, the American Civil Liberties Union and Senator Muskie have expressed concern. We do not want further transfers of tapes to occur during the study, although Secretary Califano strongly wants transfers for a program matching employment tapes with the list of Guaranteed Student Loan program defaults and with the old age and disability recipient tapes.

The employment tapes necessary for the match come from the Civil Service Commission and the Department of Defense. They have stated that they will not transfer the tapes without our approval. Because we believe that the privacy concerns with these programs can be greatly reduced by rational guidelines, if you agree, we do not intend to approve the transfers while the 60-day study is under way. Our reasons include:

- a transfer would appear inconsistent with the purposes of a study, i.e., whether and how these matching programs should take place;
- avoiding challenges to the objectivity of a study which could be made if transfers were made prior to studying the broader privacy implications of such programs; and
- belief that a delay is consistent with your concerns for protecting personal privacy, and with OMB's statutorily assigned responsibilities.

We recognize the potential that these programs offer but believe the potential for privacy invasions can be reduced, before these new programs are initiated.

Agree ✓ F.C.

Disagree _____

THE WHITE HOUSE

WASHINGTON

March 10, 1978

MEMORANDUM FOR THE PRESIDENT

FROM: Bob Lipshutz

SUBJECT: Computerized Matching Programs

With reference to the memorandum to you from James McIntyre relative to this matter, I concur strongly with his recommendations to you.

On the one hand, I fully recognize the importance of utilizing available resources to obtain the maximum results in such matters as collection of money due to the government by borrowers under the student loan program who are in default.

On the other hand, I strongly suggest that it is of much more importance for the Administration to establish rational guidelines for two very important reasons:

1. To avoid indiscriminate extensions of the matching process into many areas; and

2. To establish a carefully developed procedure for determining which computer tapes can be made available for matching, the manner in which they are processed, the safeguards relating to the usage of information so obtained, and other pertinent factors.

Therefore, the request by OMB for a thirty-day effort to develop the Administration's position on these programs and to develop these guidelines seems to be a wise course of action.

ID 781341

THE WHITE HOUSE

WASHINGTON

DATE: 10 MAR 78

FOR ACTION:

INFO ONLY: THE VICE PRESIDENT
HAMILTON JORDAN
JODY POWELL
STU EIZENSTAT
FRANK MOORE (LES FRANCIS)
JACK WATSON

SUBJECT: MCINTYRE MEMO RE COMPUTERIZED MATCHING PROGRAM

++++++++++++++++++++ ++++++++++++++++++++ ++++++++++++++++++++
+ RESPONSE DUE TO RICK HUTCHESON STAFF SECRETARY (456-7052) +
+ BY: +
++++++++++++++++++++ ++++++++++++++++++++ ++++++++++++++++++++

ACTION REQUESTED:

STAFF RESPONSE: ( ) I CONCUR. ( ) NO COMMENT. ( ) HOLD.

PLEASE NOTE OTHER COMMENTS BELOW:

THE WHITE HOUSE
WASHINGTON

	FOR STAFFING
✓	FOR INFORMATION
	FROM PRESIDENT'S OUTBOX
✓	LOG IN/TO PRESIDENT ~~TODAY~~ MON
	IMMEDIATE TURNAROUND

include tipshutz memo w/ McIntyre

ACTION	FYI	
	✓	MONDALE
		COSTANZA
	✓	EIZENSTAT
	✓	JORDAN
		LIPSHUTZ
	✓	MOORE
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		JAGODA
		GAMMILL

		KRAFT
		LINDER
		MITCHELL
		MOE
		PETERSON
		PETTIGREW
		POSTON
		PRESS
		SCHLESINGER
		SCHNEIDERS
		STRAUSS
		VOORDE
		WARREN

THE PRESIDENT HAS SEEN

THE WHITE HOUSE

WASHINGTON

March 14, 1978

MEMORANDUM FOR: THE PRESIDENT

FROM: PHIL WISE PW

The pre-advance team departs today (Tuesday, March 14) to finalize arrangements for your trip. Attached is an outline of our latest discussions with the host governments.

Please indicate any comments for my use as we negotiate your final schedule with the individual host governments.

South America and Africa - March 28, 1978 - April 3, 1978

Tuesday, March 28, 1978

0800 Depart Andrews AFB

1315 Arrive Caracas, Venezuela

1405 Depart Airport

1430 Arrive Pantheon - Bolivar Tomb

1450 Depart to La Casona

1510 Arrive La Casona

1515 Bilateral begins

1630 Bilateral ends

1645 Informal Press Opportunity

1700 Free Time at La Casona

1915 State Dinner

2230 RON

Wednesday, March 29, 1978

0800 Depart La Casona

0820 Arrive Congress

0830 Speech

0900 Depart Congress

0910 Arrive Miraflores Palace

0915 Second Bilateral

1000 Depart to Airport

1035 Arrive Airport

1100 Air Force One departs

1640 Arrive Brasilia, Brazil

1705 Depart Airport

1725 Arrive Planalto Palace

1730 Bilateral begins

1830 Bilateral ends

Wednesday, March 29, 1978 (con't.)

1845 Arrive Hotel Nacional

1930 Depart to Dinner

2000 Dinner

2130 Depart Dinner

2145 Arrive Hotel Nacional - RON

Thursday, March 30, 1978

0900 Press Conference - Hotel Nacional

0930 Press Conference ends

0940 Depart Hotel Nacional

0950 Arrive Congress

1035 Depart Congress

1040 Arrive Planalto Palace

1045 Second Bilateral begins

1200 Second Bilateral ends

1215 Arrive Airport

1230 Depart Brasilia, Brazil

1400 Arrive Rio de Janeiro, Brazil

1415 Depart Airport

1500 Arrive Overnite

Free Afternoon and Evening

Friday, March 31, 1978

0900 Clergy Meeting-Cardinal Arns and 4 or 5 leading Brazilians

0930 Meeting ends

0945 Depart to Airport

1015 Arrive Airport

1030 Depart Rio de Janeiro, Brazil

Friday, March 31, 1978 (con't.)

2205 Arrive Lagos

2230 Depart Airport

2315 RON - State House Marina

Saturday, April 1, 1978

0950 Depart State House Marina

1000 Welcoming Ceremonies - Dodan Barracks

1045 Bilaterals begin

1215 Bilaterals end

1230 Depart Dodan Barracks

1245 Lay Wreath - Tafawa Balewa Square

1300 Arrive State House Marina - Private Lunch

1500 Depart State House Marina

1515 Arrive National Theater - Speech

1600 Depart National Theater

1615 Arrive State House Marina - Free Time

1920 Depart State House Marina

1930 Arrive Federal Palace Hotel - State Dinner

2050 Depart Federal Palace Hotel

2100 RON

Sunday, April 2, 1978

This day is flexible depending upon the mini-summit meeting and logistical considerations for Kano. Options include the original Kano schedule of attending a durbar and lunch with the Governor, or a combination of additional bilateral time with Obasanjo, church, visits to examples of Nigeria's progress (new dock facilities, bridge construction, etc.) and a summit meeting with the heads of state of the front line countries.

Monday, April 3, 1978

1000 Depart Lagos

1120 Arrive Roberts Field, Liberia

1145 Bilateral

1315 Working Lunch

1440 Lunch ends

1445 Departure Ceremonies

1500 Air Force One departs

2020 Arrive Andrews AFB

THE WHITE HOUSE
WASHINGTON

Frank

Tuesday - March 14, 1978
3:15 p.m.

done

MR. PRESIDENT

I SUGGEST YOU CALL JOHN ANDERSON FIRST.

BUD BROWN IS OPPOSED TO THE NATURAL GAS PROPOSALS AND AFTER TALKING TO JOHN ANDERSON, YOU WILL PROBABLY HAVE A BETTER FEEL ABOUT CALLING BUD BROWN.

FRANK

THE PRESIDENT HAS SEEN

THE WHITE HOUSE

WASHINGTON

March 14, 1978

Frank
Bud - "seems long time to ~~reg~~ decide"
"Repubs not now involved"
seemed } aggravated because
JC

MEMORANDUM FOR THE PRESIDENT

FROM: FRANK MOORE F.M./pd

We need you to telephone Congressman Clarence "Bud" Brown of Ohio and Congressman John Anderson of Illinois.

We need their help in convincing the following Republican Members to support the natural gas proposals: Bill Steiger of Wisconsin, Gary Brown of Michigan, and Frank Horton of New York.

You should say that you are asking them as the President to accept the Senate conferees' proposal on natural gas and to help you in convincing their fellow Republicans to support these measures.

THE WHITE HOUSE

WASHINGTON

3-14-78

To Harold

Zbig

I told Chmn. Stennis that after Jim briefed by you re 5-year Navy shipbuilding program that I would meet with him, Mahon & maybe one or two others to discuss it in general terms.

Please follow up on this.

J. C.

cc: Frank Moore
Tim Kraft

1402

C

THE WHITE HOUSE
WASHINGTON

TUESDAY - MARCH 14, 1978
5:35 P.M.

MR. PRESIDENT

CONGRESSMAN WALTER FLOWERS WOULD LIKE TO TALK TO YOU ON THE PHONE.

HE WANTS TO THANK YOU FOR YOUR STATEMENT THAT IS TO BE RELEASED CONCERNING NUCLEAR LICENSING AND TO REPORT TO YOU THAT HE AND CHAIRMAN TEAGUE WILL BE WITH THE ADMINISTRATION ON STOPPING THE CRBR.

ALSO, CONGRESSMAN FLOWERS WILL PROBABLY RECOMMEND THAT YOU SEE CONGRESSWOMAN MARILYN LLOYD PERSONALLY TOMORROW. CONGRESSMAN FLOWERS HAS DEFINITELY BEEN OUR LEAD PERSON IN THIS SITUATION AND YOU SHOULD THANK HIM FOR HIS COOPERATION.

FRANK MOORE/JIM FREE

1048

THE WHITE HOUSE
WASHINGTON
March 14, 1978

Stu Eizenstat
Jim McIntyre
Secretary Schlesinger

The attached was returned in the President's outbox today and is forwarded to you for appropriate handling.

Stu - please inform other interested parties.

Rick Hutcheson

RE: NUCLEAR SITING AND LICENSING REOFRM LEGISLATION

THE PRESIDENT HAS SEEN.

Stu
J

THE WHITE HOUSE

WASHINGTON

March 13, 1978

MEMORANDUM FOR: THE PRESIDENT

FROM: JIM MCINTYRE JTM by ERL
STU EIZENSTAT Stu

SUBJECT: Nuclear Siting and Licensing Reform Legislation

The Department of Energy (DOE) is proposing legislation to reform nuclear power plant siting and licensing. All agencies support the basic concepts of the bill:

- early review and "banking" of potential nuclear sites,
- standardized plant designs,
- provision for combined construction permit/ operating license applications,
- increased state role in environmental and need for power determinations, and
- funding of intervenors in nuclear licensing proceedings.

This memorandum reviews the relationship of this bill to the Administration's current nuclear energy policy, outlines changes proposed in licensing procedures and requests your decision on issues in disagreement among the agencies.

Background

The major elements of the Administration's stated nuclear policy are:

- Some increase in the use of nuclear power from current generation light water reactors will be needed to meet energy needs, even with strong emphasis on conservation, coal and renewable resources.

- Plutonium recycle and breeder reactors will be indefinitely deferred because of their proliferation risks and their economic uncertainties.

- Safety assurances of nuclear power plants must be improved.

- The nuclear licensing process should be reformed to reduce licensing time while continuing to assure that plants are built and operated in a manner that is safe, environmentally sound, and consistent with national security objectives.

- Safe disposal of nuclear waste should be demonstrated at the earliest practical time.

This legislative proposal should be viewed inthe context of the Administration's overall nuclear policy.

DOE is proposing legislation which could reduce the time required to license a plant from 10-12 years to 6-8 years, although this reduction will not occur immediately. Use of standardized design and pre-approval of sites (site banking), are the main factors affecting leadtimes, and these two innovations cannot take full effect for 6 to 10 years.

Nuclear Plant Planning and Construction Leadtimes

Nuclear power plant construction now costs from $700 million to $1 billion. Up to 40 percent of this cost is interest and inflation encountered during the licensing and construction period. The length and cost of this have been factors in the deferral or cancellation of many planned units. Reduced leadtimes could provide earlier and cheaper nuclear power.

The nuclear power plant licensing and construction process currently is structured as follows:

1. The utility planning and preapplication period begins with a utility decision to build a nuclear reactor and ends with Nuclear Regulatory Commission (NRC) acceptance of the application for a construction site, preparation of an environmental impact report, and preparation of a preliminary plant design report.
   (2 years)

2. During the construction permit review, the NRC reviews safety and environmental data furnished by the utility and a formal trial-type public hearing (called an adjudicatory hearing) is held. The utility must also meet and follow specific

technical standards set by the NRC for plant construction. (2 years)

3. During the construction period a utility finalizes the reactor design, builds the plant, and performs pre-operation testing. (6-8 years)

4. During the operating license review, the NRC reviews the final plant design, a final safety report and an updated environmental report. This review runs concurrent with the last phase of plant construction. (during final 2 years of construction)

The DOE bill could shorten the leadtime period by 3 to 4 years through the following changes in the current process.

- Authorize an early site approval process ("site banking") allowing utilities to get NRC approval of a nuclear site up to 10 years before a decision to build a particular plant. A utility could complete all environmental studies and have these sites accepted well before deciding to build a plant at the site. This could save 1-1/2 years. 1-1½

- Allow limited construction work to begin on previously approved sites before a construction permit is issued. This could save one year. Issue #2 discusses this proposal in more detail. 1

- Encourage the use of standardized plant designs which NRC has reviewed and approved in prior proceedings. This could reduce construction time to about 5-1/2 years by assuring that construction begins on the basis of a "final" rather than preliminary design. (Standardized designs could be used without this legislation, but it is generally agreed that legislation will encourage this practice.) ½-2½

There are now 50,000 MWe of installed nuclear capacity in the U.S. (13% of present U.S. electricity generation). An additional 170,000 MWe of nuclear capacity is now in the licensing and construction process and will come on line between now and 1990. The draft bill will not affect these plants since they were begun without use of pre-approved sites or standardized design. Although it is difficult to predict how many new plants will be ordered as a result of the changes proposed by this bill, it is clear that only a few will be planned unless the process is improved. Existing uncertainties in the areas of waste disposal, licensing, spent fuel handling, financing, and public attitudes have slowed new nuclear plant orders.

This bill, coupled with our programs on waste disposal and spent fuel storage, should help remove many of these uncertainties.

Agencies disagree on the following new licensing procedures proposed by DOE:

1. Type of hearing to be held by NRC in fulfilling, licensing and National Environmental Policy Act (NEPA) responsibilities.

2. Criteria for delegating NEPA review responsibilities to states.

3. Permitting limited construction work to begin on a pre-approved site prior to a determination by the state or the NRC of the specific need for power from the proposed plant.

4. Criteria for holding public hearings at later stages of the licensing and construction processes.

5. The finding that must be made by the NRC prior to permitting interim operation of a facility.

Furthermore, some of your advisors strongly believe that any Administration bill on nuclear licensing should also:

6. require NRC to make a finding on whether a solution exists to the nuclear waste management problem, and

7. require a finding that no conservation and/or renewable energy alternatives to the nuclear power plant exist, i.e., make nuclear power in fact the "last resort," before licensing a particular plant. This would express a strong preference for renewable energy and conservation alternatives.

Political Considerations

Any proposal to change the nuclear licensing process will be controversial because it inevitably triggers the anti-nuclear/pro-nuclear debate. Furthermore, there is wide disagreement, even within the industry, on which particular parts of the process cause delay, and definitive answers are not available. Finally, many factors which influence leadtimes (such as utility financing difficulties, state requirements, and labor and equipment delays) are beyond the reach of legislative remedies.

Whatever you decide on the issues discussed below, the bill will be controversial on the Hill and among private and public interest groups. Unless the coal strike has caused a substantial reversal of attitudes in Congress, we do not expect legislation to be enacted this year.

Many groups feel the legislation has symbolic as well as substantive implications.

- The nuclear industry is looking to the Administration for a sign of continuing support for nuclear power, even though the particular bill we propose does not satisfy them in every respect. They believe that the mere expression of intent to reduce leadtimes will improve the public attitude towards nuclear power.

- The environmental community will look to this bill as an indication of our "real" feelings about nuclear power -- is it a supply of "last resort" or are we stronger supporters of nuclear power?

- Industrial users of energy will look to this bill as an indication of our seriousness in addressing the overall adequacy of energy supplies.

- The bill, along with your nominee for the fifth member of the Nuclear Regulatory Commission, will be regarded as reflecting the Administration's latest "position" on nuclear power. Attempts will be made to characterize the Administration as "pro- or anti-" nuclear based upon those two decisions.

Given the political difficulties that inevitably will be encountered, we also have considered the possibility of not sending legislation to the Congress.

DOE, Treasury, State, Commerce, Agriculture, Bob Strauss, and we recommend that a bill go forward this year for the following reasons:

1. The Administration has committed to do so

2. A consensus within the Administration has been reached on all issues other than those presented to you in this memorandum.

3. Even though a bill probably will not be enacted this year, it would be useful to begin the process now so that we can get action in the next Congress.

CEQ and EPA caution against sending a bill if it proposes to weaken public hearing procedures or if it fails to address the nuclear waste problem because:

1. Watering down public hearing procedures would be regarded as a breach of administration commitment to ensure public participation in government decision-making. It would weaken public confidence in the nuclear licensing process.

2. Failing to address the waste issue would ignore the most pressing problem facing nuclear power.

3. Many of the reforms contained in the bill could be accomplished administratively, under existing NRC authority.

The issues for decision are attached.

ISSUES FOR DECISION

ISSUE #1: Should existing NRC public hearing procedures be changed?

BACKGROUND

The Atomic Energy Act ("AEA") requires that the NRC hold adjudicatory (i.e., trial-type hearings with testimony under oath and cross-examination) hearings on issues of public health and safety. This standard was enacted at the beginning of the development of the American nuclear industry, and it was felt that only adjudicatory hearings would be sufficient to fully explore areas which were in the developing stage as a new technology. That standard has never been changed.

When the National Environmental Policy Act ("NEPA") was enacted in 1969, the NRC's review responsibilities were extended to need for power (including an assessment of energy supply alternatives) and environmental impact issues. Although NEPA itself does not require adjudicatory hearings on such issues, the NRC uses the same hearing procedures for all issues, whether health and safety or environmental. Some other independent regulatory agencies, (Federal Energy Regulatory Commission, Civil Aeronautics Board, and the Interstate Commerce Commission) routinely hold adjudicatory hearings for NEPA issues. Other federal and state agencies follow an informal, legislative-hearing format (oral statements for the record with questioning by a presiding official).

Adjudicatory hearings require significantly more time than legislative hearings, but produce a more thorough and cross-checked record. DOE questions the efficacy of or necessity for the current NRC practice of holding adjudicatory hearings for health and safety issues and for NEPA issues.

CEQ believes that, in practice, adjudicatory hearings are held on only contested issues which the NRC staff or intervenors identify; non-controversial issues are settled informally. CEQ also points out that the NRC frequently resolves technical issues by regulation: once a regulation is adopted, the issue cannot be raised in individual licensing proceedings. The Council believes that these two approaches reduce the number of issues which must be addressed in adjudicatory hearings in any given case. They further contend that formal adjudicatory hearings produce a more reliable and defensible record. They also point out that public interest groups have fought hard to obtain formal hearings, and regard these hearing rights as their primary safeguard to ensure balance and sound NRC decision-making.

OPTION #1: Permit use of "hybrid" hearing procedures for health and safety issues and legislative hearing procedures for NEPA issues.

This option would use legislative hearings for the initial screening of health and safety issues. Those issues essential to the proceeding which cannot be resolved because of factual disputes would be resolved through adjudicatory procedures.

DOE argues that this option recognizes the historical context in which adjudicatory hearings were originally enacted and why such hearings were extended by the NRC to cover NEPA issues. The development of standardized designs and a more comprehensive understanding of the nuclear technology reduce the requirements for adjudicatory hearings on all health and safety issues. A "hybrid procedure" would provide full opportunity for adjudicatory hearings on specific health and safety issues that are in dispute, but would permit less formal hearings for issues where a "trial" is unnecessary, thereby speeding the licensing process.

DOE argues further that legislative hearings are adequate for making determinations on NEPA issues, as evidenced by the fact that some current federal and state NEPA reviews for facilities other than nuclear plants are adequately resolved in legislative hearings. The Department further states that because potential environmental impacts of nuclear plants are comparable to those of other facilities, similar procedures should be adequate.

Opponents of this option argue that nuclear plants are highly controversial on environmental grounds, as well as on health and safety grounds. Therefore, contested environmental issues should be resolved in the same manner as contested health and safety issues, i.e., through adjudicatory procedures. In addition, environmental issues frequently overlap safety issues -- the availability of water for reactor cooling, for example, is both an environmental and a safety issue. Separate hearing standards may breed more confusion than efficiency, opponents argue.

Opponents also point out that weaker standards for environmental issues will not likely shorten licensing time or construction delays. NRC environmental reviews (including hearings) have caused licensing delays in less than 2 percent of the cases since 1972. Utility reports to the NRC on delays have cited environmental issues raised in hearings as the cause of only a very few delays.

Finally, opponents argue that adequate procedures for dealing with uncontested issues evolved in practice and believe that further changes are unnecessary.

Environmental groups would strongly oppose this option.

OPTION #2: Retain adjudicatory hearings for health and safety issues but allow "hybrid" procedures for NRC NEPA review proceedings.

This option would retain the status quo (adjudicatory hearings) for hearings on health and safety issues but would permit hybrid hearings for NRC NEPA review proceedings. Adjudicatory hearings would still be required on contested factual or legal environmental issues remaining after a "legislative" screening of the issues.

Proponents of this option (Stu, OMB, OSTP) argue that the technical complexity of health and safety issues are appropriate for adjudicatory procedures and that only a full formal hearing including the cross-examination of witnesses will assure the public's confidence in the decisions made on health and safety issues. But this option would provide additional flexibility in NEPA determinations, retaining the adjudicatory process, if needed, for contested issues of fact and law.

DOE opposes this option on the grounds that adjudicatory hearings for health and safety issues, while appropriate and necessary twenty years ago, are no longer needed, and that legislative or "hybrid"-type procedures are appropriate for resolving such issues.

CEQ, EPA, and Interior oppose this option on the grounds that the same hearing procedures should be applied to environmental issues as are applied to health and safety issues. They further contend that two separate systems, one for health and safety, and one for environmental reviews would complicate and could actually slow down the hearing process.

OPTION #3: Continue the status quo, using adjudicatory hearings for contested issues in both the health and safety, and in environmental areas.

This option would retain existing NRC hearing procedures. Adjudicatory hearings would be required on contested health, safety and environmental issues.

Proponents of this option argue that formal hearings on contested issues are the best way to ensure an adequate, defensible basis for making licensing decisions. Formal hearings are also the only way to assure the public that an adequate public examination is made of a proposed reactor. Nuclear plant licensing continues to be highly controversial, on both safety and environmental grounds. Serious safety questions about reactor sites and designs continue to be raised in individual licensing proceedings. Reactor siting remains environmentally controversial, particularly at coastal locations. Contested issues of this sort should be addressed in proceedings that yield reliable information and win public confidence. Adjudicatory hearings achieve these purposes better than other hearing approaches.

Proponents further argue that the existing process has evolved into a reasonably efficient format that permits resolution of non-controversial issues, and reserves formal proceedings for contested ones. The process is working, and all parties (NRC staff, utilities, intervenors) are familiar with procedures depending on the "character" of the issue (safety vs. environmental), is more likely to breed confusion and delay than clarity or efficiency.

Opponents of this option repeat the views expressed in Options #1 and #2 in that the original premise for requiring adjudicatory hearings no longer exists and that mandatory adjudicatory hearings for the NEPA review process goes beyond the scope of NEPA itself.

DECISION

1. Permit the use of hybrid hearings for health and safety issues and legislative-type hearings of NEPA issues. (Recommended by DOE, State, and Commerce.)

2. Keep adjudicatory hearings for health and safety but permit hybrid hearings for NEPA. (Recommended by Stu, OMB, and OSTP.) ✓ FC

3. Retain adjudicatory hearings for both health and safety, and NEPA issues. (Recommended by CEQ, Interior, and EPA.)

ISSUE #2: In delegating federal environmental impact statement responsibilities to states, should we require that the states use procedures comparable to those now required of the NRC to carry out these responsibilities?

NEPA requires the NRC to prepare an Environmental Impact Statement (EIS) for each nuclear power plant. The NRC must:

- determine whether the power from the nuclear plant is needed;
- assess all reasonable alternative means of meeting power needs;
- assess the environmental effects of permitting the reactor vs. pursuing other alternatives; and
- make a balanced decision on whether the plant should be built.

Many states under their own laws also undertake environmental reviews, which duplicate NRC efforts.

The draft bill would authorize the NRC to delegate all or part of these environmental review responsibilities to a state or an authorized regional organization which has a program approved by NRC. States would not be required to accept this responsibility, although would be encouraged to do so. The NRC would retain responsibility for all health and safety determinations because of the technical complexity of these issues.

Delegation of NEPA responsibility is intended to minimize state and federal duplication in the licensing process. This process, which recognizes state interests and expertise in siting and environmental reviews, hopefully will increase public participation and confidence in the licensing process.

The Governors have endorsed NEPA delegations, and all agencies agree that some type of state delegation would be a positive step. Many agencies are concerned, however, that unless we require delegation with procedures comparable to those now required at the federal level, substantive environmental protections now in place will be reduced.

The bill would establish nine specific standards for state performance of the NEPA responsibilities and would require the NRC to set guidelines for approval of state review programs. At issue is whether the three following procedural

protections, now in place at the federal level, should be statutorily required at the state level or whether we should let states have more flexibility than is now required at the federal level.

See Issue I

1. Formal adjudicatory hearings with cross-examination for environmental issues.

2. Funding by the states for intervenors who could not otherwise afford to become a party to the proceeding. (This will be required by this bill at the federal level -- a change from current policy.)

3. Specific procedures for state "need for power" determinations.

If a state chose not to accept delegation of responsibility, item 2 would continue to be required of the NRC, while continuation of item 1 would depend upon your decision on issue 1.

OPTION #1: Provide states with the opportunity to assume the current NRC responsibility for environmental determinations and reviews without requiring comparable procedures.

DOE strongly opposes making delegations contingent on state adjudicatory hearings or state-provided intervenor funding. DOE believes that giving the NRC administrative authority to establish requirements for state programs is adequate protection. Mandating these procedures would be overly restrictive and would constitute federal interference in state decision-making procedures. DOE also points out that (1) this bill would provide stronger procedural requirements than NEPA itself requires; and (2) the governors oppose mandatory intervenor funding at the state level.

(It should be noted, however, that existing NRC procedures for carrying out NEPA require formal hearings, even though NEPA itself does not require this procedure.)

DOE believes that we would be imposing on the states an action not required by the underlying federal statute (NEPA) and not used for all other project evaluations which have comparable or greater environmental impacts than nuclear plants. DOE further believes that requiring states to use special hearing procedures and intervenor funding, would constitute a strong federal interference in state proceedings, with a broader impact than nuclear plant siting. DOE argues that this action is strongly opposed by some governors, although it is unclear, at least to Stu, CEQ, and OMB,

whether a requirement of comparable procedures would in fact dissuade states from assuming NEPA responsibilities.

CEQ states that environmental groups regard adjudicatory hearings as their strongest check against unbalanced or arbitrary government decisions. These groups would strongly oppose any transfer of responsibility which weakens public participation rights.

OPTION #2: Delegation of NEPA-related responsibilities could occur only if states provide procedures comparable to those of the NRC

This option would require states to use the same basic procedures as are now or will be required when the NRC conducts environmental reviews. Those favoring this option believe that on-the-record (adjudicatory) hearings with cross-examination are needed for reliable, factual decision-making, and that the funding of public intervenors in these proceedings will assure greater participation and a more thorough airing of issues. They also believe that in light of the importance of the "need for power" and environmental determinations, NRC procedures need to be delegated along with the NRC responsibilities.

CEQ adds that adjudicatory hearings on contested issues are at the heart of public confidence in reactor licensing. If current hearing standards are not maintained through the transfer of responsibility to the states, public confidence in the integrity of the process would be seriously weakened.

DECISION

1. Delegation without requiring comparable procedures. (Recommended by DOE, Treasury, Commerce, and State.) & Jody

2. Delegation if states provide comparable procedures. (Recommended by Stu, OMB, CEQ, OSTP*, EPA, and Interior.) ✓ JC

Use hearing standards as in Issue I.

*OSTP supports this option with respect to procedures for environmental issues and need for power, but feels that requiring the states to assume the burdens of intervenor funding is an excessive intrusion by the federal government into the prerogatives and financial obligations of states. Stu, OMB, and DOE, however, will be developing means of providing assistance to states for intervenor funding since these are costs which the federal government would bear if no delegation to the states took place.

ISSUE #3: Should nuclear plant construction be allowed on pre-approved sites prior to the final "need for power" determination and environmental report update?

Under current NRC procedures, limited construction work on a reactor site is allowed prior to issuance of a construction permit. Before allowing this work, however, NRC (1) completes a full environmental review; (2) determines the "need for power" from the proposed plant; and, (3) determines the basic safety of a reactor at that site. A Limited Work Authority (LWA), which allows the utility to do some early construction work, can then be issued. The construction permit is issued only after NRC completes its safety in its entirety.

The type of work that can be done under a LWA is substantial, and can result in expenditures of $50 and $100 million over 9 to 18 months. All early construction work done under a LWA is at the utility's risk; in the event that a construction permit is not issued, the utility customers or stockholders (as determined by that state public utility commission) must cover the sunk costs.

The draft bill provides early construction work similar to current practice in that: (1) NRC or the states must have completed a full environmental review, and (2) NRC must have determined the basic safety of a reactor at that site. However, under the draft bill the NRC (or state) determination of the specific "need for power" need not be made before construction activity begins. This is the main difference between the draft bill and current practice.

Under the draft bill, prior to the time that early construction is permitted, any given site will have received one general "need for power" review when a site is approved and "banked" for later use. However, as much as ten years could elapse between banking of the site and the decision to build a particular plant.

The issue is whether early construction should be allowed at a pre-approved site prior to (1) completion of the site-specific "need for power" determination and (2) an update of the site and plant environmental report. The draft bill does give both the state and the NRC authority to stop early construction for any reason, before these findings have been made.

OPTION #1: No limited site construction allowed prior to the site specific "need for power" determination and an environmental report update.

CEQ, Interior and EPA are concerned that an investment of $50-$100 million in reactor site construction could prejudice the NRC's or state's "need for power" determination and later operating license decisions. Major construction could occur prior to public scrutiny of the utility's power demand projects and other justification of the need for a plant. In addition, little opportunity will exist to review environmental issues raised between the time the site was banked and the time that construction begins.

This option would eliminate authority to allow limited construction work on a banked site prior to a need for power determination. The public would thus be guaranteed an opportunity to review the site (in the "need for power" proceeding) before any construction could begin.

OPTION #2: Permit limited construction prior to the site-specific need for power determination.

The early construction provision could save from 6 to 12 months of plant licensing time, which represents from 12 to 33% of the time to be saved under the draft bill. While a utility could plan its applications in such a way as to minimize or eliminate this potential delay, not all utilities are likely to do so. This advantage of 6 to 12 months in the licensing time could result in power cost savings to consumers of $40 to $60 million per plant. In addition, the power replacement purchase costs associated with a six month delay could be as much as $25 million. On the other hand, should the "need for power" determination not be made positively, the consumers or stockholders would ultimately pay the $50 to $100 million spent on construction during this period.

The bill does allow the NRC or the affected state to prevent early construction if they wish for any reason. The bill requires that a notice of intent be filed with the NRC and the state six months prior to submission of a construction permit application, and also requires thirty days notice before actual construction begins. Those favoring this option believe that these notice provisions, coupled with discretionary authority to prevent early construction, are sufficient to protect the public's right to review environmental issues.

In addition, this provision for early site work is one of the main incentives for utilities to seek early site approval.

Decision:

OPTION #1: No limited site construction permitted prior to the completion of a site-specific "need for power" determination. (Recommended by CEQ, Interior, EPA, and OSTP).

OPTION #2: Permit limited site construction prior to the completion of a site-specific "need for power" determination. (Recommended by Stu, OMB, DOE, Treasury, Commerce, and State). & Jody

✓ JC

ISSUE #4: How difficult should it be for the public to obtain a hearing on a health, safety or environmental issue at later stages of the NRC licensing process?

Under current practice, any party to an NRC licensing proceeding can request a hearing at any stage of the proceeding simply by filing a petition which describes the party's interest and the issues it wants heard. The Commission then decides whether the issues raised need to be heard. These rules make it fairly easy for an interested party to raise issues at any time during the licensing process as long as the issue is well defined. Once the hearing issues are defined, NRC rules give the intervenor "discovery"--that is, access to any relevant information in the possession of the utility applicant.

The draft bill tries to get as many issues as possible raised early in the licensing process, so that there is less chance of delay due to hearings later in the process. Thus, certain provisions of the draft bill (see Option #1), would change current NRC practice by making it much more difficult to obtain a hearing at the operating licensing state of the process.

All agencies agree with the general goal of an early airing of as many issues as possible. However, because the early hearings will be at the time a site is banked, 10-15 years could pass between the time of those early hearings and the operating license stage. Consequently, many agencies are concerned that the draft bill would make it too difficult to obtain a hearing at the later stage.

All agencies agree that hearings at the operating stage should generally be limited to new issues, the disagreement here is over what would be a "new issue".

All agencies also agree that new and significant information should permit the re-hearing of an old issue; the disagreement is over how difficult it should be for an intervenor to obtain the new information and how significant any new information would have to be to justify a hearing.

The two options are set forth below in order of difficulty, starting with the provisions in the current draft bill.

OPTION #1: More difficult

- o A new issue would be one for which there had been "no priority opportunity" for hearing.

- o Any new information would have to be so significant that on its face it would make (facility) compliance with NRC law and regulation unlikely.

DOE believes that the opportunity for subsequent hearings should be as narrow as possible in order to encourage the early raising of issues and to limit potential delays in operating a plant.

Under the draft bill, "prior opportunity" would have existed if information on the issue was generally available--in the hearing record, in public files at the NRC, or in generally circulated literature--at the time of a previous hearing.

(The NRC can always raise issues itself, even in the absence of the requisite showing by an intervenor. In addition, state proceedings would not be limited on any issue.)

DOE believes this proposal in no way limits NRC's authority or the utilities' responsibility to maintain safety standards. DOE believes the limitation on the ability to reopen issues is central to the purposes of this legislation. Without this limitation, DOE believes it is unlikely that a utility would make the substantial investment required to have a site approved, for there would be no assurance that it could use that site when needed. Without this limitation it is unlikely that a manufacturer would attempt to license a standardized design, for issues could be reopened each time a plant was to be constructed.

On the other hand, opponents of this option argue that it would place an undue burden on public intervenors, since the existence of a "prior opportunity" might have been 10 or more years before. Since a petitioner would not have the right of discovery of information within the control of a utility prior to establishing the existence of an issue or of new information, this type of showing would be even more difficult. This option, opponents argue could weaken existing safety standards because of this major, new procedural threshold, and environmental groups consequently would oppose this option.

OPTION #2: Less Difficult

- o A new issue would be one which "had not been presented in a prior proceeding."

- o Any new information would have to be significant enough to persuade the NRC that facility compliance with NRC law and regulations would be unlikely.

In this option the basic limitation is relaxed somewhat from "no prior opportunity" to "not previously presented." If the issue had been presented in the context of a previous hearing, subsequent hearings generally could not be held to address this issue. However, an issue on which information generally had been available but which had not been raised in the NRC process could be the subject of a new hearing under this option. This would provide some incentive for the utility applicant to be sure that all known issues were raised in early proceedings, but would also place a burden on the utility to ensure that even obvious issues and issues resolved informally were entered in the record.

In addition, this option would relax the test for showing the existence of new information on issues which had been previously presented. NRC's present criteria for permitting hearings on new information--discussed in the introduction of this issue--would be used under this option. If an intervenor had an apparently legitimate contention, a hearing would be convened. The petitioner then would have discovery rights to find additional information (as under current NRC rules), and the merits of all information available on this issue would be addressed in a hearing.

Under this option a showing of a likely violation of commission regulations would be enough to raise an issue for hearing at any stage of the licensing process. DOE contends that this option is no better than the unacceptable status quo.

Decision:

OPTION #1: Difficult (Recommended by DOE, State, Commerce, and Stu) & Jody ✓ JC

OPTION #2: Less Difficult (Recommended by OMB, CEQ, Interior, OSTP, and EPA).

ISSUE #5: Should the NRC be permitted to grant interim operating authority upon finding:

a) that there is an "urgent public need or emergency," or
b) that it is "in the national interest?"

Background

The NRC does not now have authority to permit interim operation of a nuclear plant prior to the issuance of an operating license. At one time there was such statutory authority, but the requirements were very strict and the provision was only used once. It lapsed by its own terms in 1973.

The bill would permit the NRC to authorize interim operation prior to completion of all required hearings. The purpose of this provision is to permit operation of a fully-constructed but not yet licensed nuclear plant, but only after hearings have been completed and all issues resolved concerning public health and safety.

The proposed options pertain to what finding the NRC should be required to make for this authority to be employed.

OPTION #1: Require the NRC to find that operation is necessary because of an "urgent public need or emergency."

This standard would have the effect of limiting use of the provision to extremely grave situations. Failure of other power sources or need to conserve alternate sources of energy would presumably not be sufficient to meet this standard.

Proponents of this option argue that early operation should be permitted prior to the completion of hearings only in emergency situations. The purpose of hearings is to raise and resolve issues, and operation prior to resolution of all issues and issuance of license should only be permitted in very limited situations. CEQ believes that conservation and alternative power sources should be used before resorting to a nuclear power plant which has not been fully licensed.

Opponents of this option argue that the hearing will have been completed on all health and safety issues and that it would be extremely difficult to meet this standard in almost any case.

OPTION #2: Require the NRC to find that operation is necessary "in the national interest".

This standard would permit the provision to be employed in more cases than the first, that is, would be a lower threshold to meet. This standard could be met in situations where there was a power shortfall, or if there was a need to replace power supplied by other energy sources (i.e., oil, gas, coal, or hydro).

Proponents of this option argue that there is a need for a usable provision for interim operation prior to completion of hearings on environmental, anti-trust or other non-health and safety issues. This would be one of the few provisions in the bill that could have an impact on plants currently in the NRC process rather than just on future plants.

Opponents of this option argue that the standard is so vague that any plant could begin operations before it were fully licensed. Allowing operations to begin in non-emergency situations while hearings are still going on would seriously undermine public confidence in the hearing and licensing process. Instead, early operation should be reserved for genuine power emergencies.

Decision:

1. Require a finding of "urgent public need or emergency" (Recommended by CEQ, OSTP, OMB, EPA, and Interior). ✓ FC

2. Require a finding of "in the national interest" (Recommended by DOE, State, Commerce and Stu).

ISSUE #6 Should a provision be added to the proposed bill that would require that the NRC make certain findings with respect to the permanent disposal of nuclear wastes?

Should the NRC be explicitly prohibited from licensing new nuclear power plants if the findings are negative?

The lack of any demonstration of a safe and environmentally sound method for disposing of hazardous high level nuclear wastes is the largest problem associated with the expanded use of nuclear power. The National Energy Plan projected an increased use of nuclear power and also announced the Administration's commitment to the availability of adequate nuclear waste storage facilities.

A few months ago, DOE established a Task Force to undertake a comprehensive review of the nation's waste management policy and program. The Task Force report will be released later this month, and the remainder of 1978 will be devoted to interagency and public review and discussion, leading to a final Administration position by the end of the year. Industry and environmental groups agree that the waste management issue is one of the major uncertainties limiting new nuclear plant orders.

Since the draft bill will have the effect of encouraging the use of nuclear power to meet the NEP energy supply objectives, some agencies believe that the bill should contain positive legislative steps to give further assurance that waste disposal can be accomplished without risk to public health and safety. They argue that this is necessary to make the bill consistent with the NEP and other Administration policies on waste management. Others do not believe legislative steps are needed, although they place high priority on dealing with the waste issue.

The following points also bear on your consideration of this issue:

- The State of California passed legislation in 1976 which prohibits nuclear plant siting until there is "demonstrated technology" for permanent disposition of high level nuclear wastes. (This state legislation goes further in preventing nuclear licensing than would any

of the options presented below.) Several other states are considering similar reuqirements, although referenda to adopt such provisions have been defeated in many states.

- The Federal Government has had a poor track record in handling the waste disposal problem, contributing to public doubts about whether these wastes can be disposed of safely.

An actual waste repository cannot be licensed by the NRC and in operation before 1985. Thus, it is impossible actually to demonstrate waste disposal within the next few years. Some believe that in lieu of this demonstration, a firm determination must be made that technical solutions to the waste problem are available in order to restore public confidence that nuclear wastes can be disposed of safely. Frank Press, however, has pointed out that all non-Government, serious technical reviews of the waste management issue, including those by the National Academy of Science, the American Physical Society and the Ford Foundation Mitre Nuclear Power Study, have agreed that the nuclear wastes can be safety contained. He believes that the likelihood of a new finding that these wastes cannot be contained is low. However, Frank cannot make a similar statement with respect to the adequacy of the present federal program to demonstrate safe disposal of wastes. (DOE is now reviewing and developing a new Adminstration program.)

The issues for your determination are: (1) What, if any, NRC duties should be mandated in the licensing bill? (2) What, if any, future explicit restrictions on nuclear plant licensing should be mandated by the bill?

Option #1: Do not raise the nuclear waste issue either administratively or legislatively in connection with the draft bill.

While the Adminstration would continue ongoing efforts on the waste management, no new steps, either administrative or legislative, would be taken. The Administration could reiterate its previously determined plans to have interagency and public reviews of its waste management policy and programs. Both this and Option #2 avoid any Executive Branch curtailment of nuclear reactor licensing on the grounds of no resolution of the waste storage issue. Of course, under both Options #1 and #2, NRC retains the authority to curtail licensing on its own.

Option #2: Administratively request NRC to determine whether there are reasonable assurances that nuclear wastes can be disposed of safely.

This option would be implemented as follows:

- Issue an Executive Order establishing a DOE-chaired Interagency Committee on Nuclear Waste Management to develop a comprehensive plan by September 30, 1978, for the storage and permanent disposal of commercial high level nuclear wastes. This would be very similar to what is planned by DOE.

- DOE would, as presently planned, produce by December 31, 1979, a final Generic Environmental Impact Statement (GEIS) on commercial nuclear wastes, including an evaluation of all methods for disposing high level wastes and the means for implementing these.

- NRC would review the GEIS with public participation. If it wanted to do so, it would report whether, in its opinion, wastes can be handled safely. (NOTE: Since the NRC is an independent agency, it cannot be bound to take any action by Executive Order. The present chairman, however, has indicated his personal willingness to proceed in this manner.)

This option would not legally affect NRC's licensing of nuclear plants. However, as a practical matter, if NRC determines that wastes cannot be handled safely, NRC may well decide or be required by the courts to stop issuing licenses. This risk is also present under Option #1. This option would require NRC to review the feasibility of various waste disposal methods, but it would not require a review of the DOE plan to implement those methods.

Option #3: Legislatively require NRC to determine: (1) whether there are reasonable assurances that nuclear wastes can be disposed of safely, and (2) whether a safe and timely plan exists to dispose of nuclear wastes.

This option would be implemented as follows:

- DOE would produce a final Generic Environmental Impact Statement (GEIS) on nuclear wastes by December 31, 1979.

° NRC would be required to review the environmental impact statement, to hold public hearings and to determine:

(1) whether nuclear wastes can be safely contained until decayed to harmless levels; and

(2) whether a safe and timely plan exists for the disposal of nuclear wastes.

° If the Commission cannot make either finding, NRC would be required to report to the President and to the Congress on how to ensure the continued protection of the public health and welfare.

This option would demonstrate legislatively that the Administration wants a full public review of nuclear waste disposal, but would not require a cessation of licensing in the event of negative findings. Nonetheless, any negative finding on whether waste can safely be contained as in Option #2 likely would result in no new licenses be granted. Environmental groups would see this option as a positive and meaningful step, although they would favor the stronger steps proposed under Option #4.

Establishing in law the requirement for a finding that waste can be disposed of safely could move utilities to delay any plant orders until after the finding. Therefore, the industry has opposed including the waste issue in the bill, although they are encouraging us to move forward with current plans for resolving the issue. In addition, DOE believes that the NRC might be precluded from performing other waste management evaluations until this review was completed. This could delay the program by several years. GEQ, OSTP, EPA, Stu and OMB do not believe this would occur, however, if the legislation were drafted to make clear an intent <u>not</u> to preclude other NRC licensing or environmental review activities.

<u>Option #4</u>: <u>In addition to provisions in Option #3, mandate the termination of nuclear plant licensing if the NRC's determination is negative with respect to either question</u>.

This option would require that all licensing of nuclear plants cease after four years if the NRC cannot find (1) that nuclear

wastes can be disposed of safely, and (2) that a plan exists to store nuclear wastes. This would send the strongest possible signal that the Administration puts a high priority on solving the waste management problem before relying on nuclear power as a future energy resource. (Nevertheless, this option is still not as restrictive on nuclear plant licensing as the California law, which halts all licensing until waste disposal has been demonstrated.)

Similar to Option #3, this option could result in a delay in any new plant orders until this finding is made.

Decision:

Option #1: Do not raise the nuclear waste issue in connection with the draft bill. ☐

(Recommended by: DOE, Commerce, State) & Jody

Option #2: Administratively request NRC to determine whether there are reasonable assurances that nuclear wastes can be disposed of safely. ☑ JC

(Recommended by: Stu, Treasury)

Option #3: Legislatively require NRC to determine: (1) whether there are reasonable assurances that nuclear wastes can be disposed of safely, and (2) whether a safe and timely plan exists to dispose of nuclear wastes. ☐

(Recommended by: OMB, OSTP, EPA, Interior)

Option #4: In addition to the provisions in Option #3, mandate the termination of nuclear plant licensing if the NRC's determination is negative with respect to either question. ☐

(Recommended by: CEQ)

ISSUE #7: Should a provision on conservation and renewable energy resource alternatives be added to the bill?

In the President's Energy Address to Congress and in other Presidential statements, a commitment was expressed to rely first on energy conservation to deal with the energy crisis, then on coal with an increased use of solar and other renewable energy sources, and finally on nuclear power. In campaign statements the President referred to nuclear power as "a last resort."

Under the current practice, the NRC is required by NEPA to fully examine alternative ways -- including conservation and the use of renewable energy resources -- to avoid or to meet the power demands for which a new reactor is proposed. CEQ has proposed that if the NRC or a state finds that these alternatives to the proposed reactor are feasible, that construction of the reactor should not be authorized.

This proposal would take the current NEPA process a substantial step further, by mandating a preference for conservation and renewable energy resources if they constitute a feasible alternative to a proposed reactor. The alternative would have to be economical and within the utilities' ability to implement.

Option #1: Require a mandatory finding that no conservation or renewable resources alternatives exist.

CEQ believes its proposal would stimulate the development of conservation, solar and other renewable resource technologies more quickly than would occur under current licensing practices. CEQ argues that the proposal does not prohibit necessary nuclear power expansion; it only places a higher priority on other alternatives as compared with the nuclear option.

Moreover, the NRC is already required to analyze alternatives. This option would impose a decision rule, but need not require more work or more time.

While this option is conceptually interesting, some agencies have expressed strong reservations about its implementation.

- The NRC does not have expertise in the non-nuclear power area and as currently constituted would have limited ability to address these issues.

- Arriving at definitive findings on the availability of alternatives, particularly with advancing technologies and difficulties in projecting conservation-related savings, will be very difficult. Ambiguity or lack of definitive findings would increase the likelihood of litigation over particular reactor license applications.

Option #2: Do not require a mandatory finding that conservation or renewable alternatives exist.

DOE argues that NEPA already requires an analysis of all conservation and renewable alternatives prior to authorizing nuclear plant construction. If any of these are shown to be more economical than the proposed nuclear plant and could be implemented, then the nuclear plant as a practical matter probably would not be approved, even without the addition of this language in the bill.

In addition, the proposal would impose a difficult burden on utilities to prove a negative fact, i.e., that no conservation or renewable energy alternative exists within all reasonable steps that a utility could take. This provision could also add time to the nuclear licensing process, directly counter to the principal objective of the DOE bill.

Decision:

Option #1: Require a mandatory conservation and renewable alternatives finding. ☐

(Recommended by: CEQ, Interior)

Option #2: Do not require a mandatory conservation and renewable alternatives finding. ☑ JC

(Recommended by: Stu, OMB, OSTP, EPA, DOE, Treasury, Commerce, State) & Jody

Eizenstat and OMB Comment:

It is possible to encourage the NRC and the states to take these alternatives into account without going as far as CEQ proposes. We do not believe that Option #1 is administratively practical. We would recommend that DOE provide technical assistance in evaluating non-nuclear alternatives and that the Administration,

through its public statements, encourage full consideration of conservation and renewable resource options. The letter transmitting this bill to Congress could highlight out commitment to developing alternatives and to providing incentives for their commercial use.

ok I

CEQ and Interior Comment:

CEQ and Interior believe it both important and practical to establish at the earliest opportunity a policy preference for conservation and renewable energy at the time of deciding on individual plants. California, for example, currently does so. We believe this bill is an excellent opportunity to do so.

SCHLESINGER COMMENT

Department of Energy
Washington, D.C. 20585

MEMORANDUM FOR: THE PRESIDENT

FROM: JIM SCHLESINGER

SUBJECT: Nuclear Siting and Licensing Act

In your April 20, 1977, energy message you committed to cutting the 10-12 year lead time for nuclear power plants in half. The proposed Nuclear Siting and Licensing Act (NSLA) could largely achieve this reduction and bring nuclear plants on-line in 6 1/2 years, by building standardized plants on pre-approved sites, and reducing uncertainties by limiting the opportunity to reopen issues that do not adversely affect public health and safety.

The seven issues presented to you for decision, however, are crucial in determining whether this legislation will meet this goal. Certain of these issues (in particular, issues 6 and 7, relating to waste management and alternative energy sources) could undercut the legislation by further complicating necessary decisions regarding waste management or by imposing a standard which would make justification of almost any nuclear power plant very difficult.

Other issues (in particular, issues 2 through 4, relating to NEPA review criteria, criteria for allowing limited construction work on a site, and criteria for reopening hearing issues) are essential in streamlining the regulatory process and providing State involvement in that process. In particular, issue 4 -- which sets standards for reopening hearings -- is of great importance in assuring some degree of certainty in the licensing process. Your reference to this issue in speaking to the Governors last week has underscored the need for a firm but fair process to encourage all relevant issues to be raised at the earliest possible point in the licensing process and avoid recurring litigation of old issues.

Finally, there are two issues (issues 1 and 5, relating to types of hearings to be held and interim operation of nuclear plants) which could materially strengthen the legislation and provide a less cumbersome method of bringing nuclear capacity on-line, while ensuring that health and safety standards are maintained.

The significance of this legislation cannot be overestimated. In the past three years, there have been nine new orders, but twenty-three cancellations of orders for light water reactors, for a net reduction of fourteen plants representing over 14,000 megawatts of capacity. Even utilities noted for their past commitment to the use of nuclear power have publicly stated that they would not order additional units until the current uncertainties in the siting and licensing process were substantially reduced.

I believe that there is considerable Congressional support for strong licensing legislation and the Governors will be similarly supportive of legislation which will make meaningful changes in the current licensing process.

ADDITIONAL
STAFF COMMENTS

Congressional Liaison

Senate: Virtually every Senator, except those who totally oppose nuclear power, is strongly supportive of reducing the siting and licensing period. Any reduction in the time required to bring a plant on stream would be welcomed. The only complaint we will hear from pro-nuclear Senators is that we have not reduced the period enough.

House: House energy people (Teague, Flowers) still consider this Administration anti-nuclear. Anything we can do to cut lead-time on nuclear siting and licensing would be good.

CEA: concur with Eizenstat on all issues

On the nuclear waste issue (#6), CEA is concerned that the proposal might increase the uncertainty about the future of nuclear power. In either option #3 or #4, utilities might delay making commitments until after NRC determination was made. This could offset any favorable effect of expedited licensing. After you have made a decision, CEA suggests that you ask for an assessment of the induced delays resulting from implementation of the nuclear waste decision.

CEA concurs that steps should be taken to accelerate the process of building nuclear plants. However, shortening the construction time will contribute but a modest amount to cheaper electricity.

Comments from Jody Powell, CEQ and OSTP are noted at appropriate points in the attached memo.

THE WHITE HOUSE

WASHINGTON

March 7, 1978

MEMORANDUM FOR THE VICE PRESIDENT
HAMILTON JORDAN
JODY POWELL
FRANK MOORE
CHARLES SCHULTZE
CHARLES WARREN
JIM McINTYRE
FRANK PRESS
STU EIZENSTAT
JACK WATSON

FROM: RICK HUTCHESON

SUBJECT: NUCLEAR LICENSING LEGISLATION

Attached is a redraft of the nuclear licensing decision memorandum which was circulated for senior staff comment last week. The Department of Energy has put forward two new options for the President's decision. I would like to have your comments in as soon as possible, but in no case later than 10:00 a.m. Wednesday, March 8.

You will note that the memorandum has not been retyped, so that you can readily see changes. These are indicated by capital letters, and in the case of issues 1 and 5, double-spaced pages.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

ACTION

MEMORANDUM FOR: THE PRESIDENT

FROM: JIM MCINTYRE/STU EIZENSTAT

SUBJECT: Nuclear Siting and Licensing Reform Legislation

The Department of Energy (DOE) is proposing legislation to reform nuclear power plant siting and licensing. All agencies support the basic concepts of the bill:

- early review and "banking" of potential nuclear sites,
- standardized plant designs,
- provision for combined construction permit/operating license applications,
- increased state role in environmental and need for power determinations, and
- funding of intervenors in nuclear licensing proceedings.

This memorandum reviews the relationship of this bill to the Administration's current nuclear energy policy, outlines changes proposed in licensing procedures and requests your decision on issues in disagreement among the agencies.

Background

The major elements of the Administration's stated nuclear policy are:

- Some increase in the use of nuclear power from current generation light water reactors will be needed to meet energy needs, even with strong emphasis on conservation, coal and renewable resources.
- Plutonium recycle and breeder reactors will be indefinitely deferred because of their proliferation risks and their economic uncertainties.
- Safety assurances of nuclear power plants must be improved.
- The nuclear licensing process should be reformed to reduce licensing time while continuing to assure that plants are built and operated in a manner that is safe, environmentally sound, and consistent with national security objectives.

- Safe disposal of nuclear waste should be demonstrated at the earliest practical time.

This legislative proposal should be viewed in the context of the Administration's overall nuclear policy.

DOE is proposing legislation which could reduce the time required to license a plant from 10-12 years to 6-8 years, although this reduction will not occur immediately. Use of standardized design and pre-approval of sites (site banking), ~~not hearing procedures~~ are the main factors affecting leadtimes, and these two innovations cannot take full effect for 6 to 10 years

Nuclear Plant Planning and Construction Leadtimes

Nuclear power plant construction now costs from $700 million to $1 billion. Up to 40 percent of this cost is interest and inflation encountered during the licensing and construction period. The length and cost of this have been factors in the deferral or cancellation of many planned units. Reduced leadtimes could provide earlier and cheaper nuclear power.

The nuclear power plant licensing and construction process currently is structured as follows:

NUCLEAR REGULATORY COMMISSION

1. The utility planning and preapplication period begins with a utility decision to build a nuclear reactor and ends with (NRC) acceptance of the application for a construction permit. During this period a utility chooses a site, prepares an environmental impact report, and prepares a preliminary plant design report. (2 years)

2. During the construction permit review, the NRC reviews safety and environmental data furnished by the utility and a formal trial-type public hearing (called an adjudicatory hearing) is held. The utility must also meet and follow specific technical standards set by the NRC for plant construction. (2 years)

3. During the construction period a utility finalizes the reactor design, builds the plant, and performs pre-operation testing. (6-8 years)

4. During the operating license review, the NRC reviews the final plant design, a final safety report and an updated environmental report. This review runs concurrent with the last phase of plant construction. (during final 2 years of construction)

The DOE bill could shorten the leadtime period by 3 to 4 years through the following changes in the current process.

- Authorize an early site approval process ("site banking") allowing utilities to get NRC approval of a nuclear site up to 10 years before a decision to build a particular plant. A utility could complete all environmental studies and have these sites accepted well before deciding to build a plant at the site. This could save 1 1/2 years.

- Allow limited construction work to begin on previously approved sites before a construction permit is issued. This could save one year. Issue #2 discusses this proposal in more detail.

- Encourage the use of standardized plant designs which NRC has reviewed and approved in prior proceedings. This could reduce construction time to about 5-1/2 years by assuring that construction begins on the basis of a "final" rather than preliminary design. (Standardized designs could be used without this legislation, but it is generally agreed that legislation will encourage this practice.)

There are now 50,000 MWe of installed nuclear capacity in the U.S. (13% of present U.S. electricity generation). An additional 170,000 MWe of nuclear capacity is now in the licensing and construction process and will come on line between now and 1990. The draft bill will not affect these plants since they were begun without use of pre-approved sites or standardized design. Although it is difficult to predict how many new plants will be ordered as a result of the changes proposed by this bill, it is clear that only a few will be planned unless the process is improved. Existing uncertainties in the areas of waste disposal, licensing, spent fuel handling, financing, and public attitudes have slowed new nuclear plant orders. This bill, coupled with our programs on waste disposal and spent fuel storage, should help remove many of these uncertainties.

Agencies disagree on the following new licensing procedures proposed by DOE:

1. TYPE OF HEARING TO BE HELD BY NRC IN FULFILLING NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) RESPONSIBILITIES.

2 ~~1~~. Criteria for delegation of the National Environmental Policy Act (NEPA) review responsibilities to states.

3 ~~2~~. Permitting limited construction work to begin on a pre-approved site prior to a determination by the state or the NRC of the specific need for power from the proposed plant.

4 ~~3~~. Criteria for holding public hearings at later stages of the licensing and construction processes.

5. THE FINDING THAT MUST BE MADE BY THE NRC PRIOR TO PERMITTING INTERIM OPERATION OF A FACILITY.

Furthermore, some of your advisors strongly believe that any Administration bill on nuclear licensing should also

4. require NRC to make a finding on whether a solution exists to the nuclear waste management problem, and

5. require a finding that no conservation and/or renewable energy alternatives to the nuclear power plant exist, i.e., make nuclear power in fact the "last resort," before licensing a particular plant. This would place a strong preference for renewable energy and conservation alternatives.

Political Considerations

Any proposal to change the nuclear licensing process will be controversial because it inevitably triggers the anti-nuclear/pro-nuclear debate. Furthermore, there is wide disagreement, even within the industry, on which

particular parts of the process cause delay, and definitive answers are not available. Finally, many factors which influence leadtimes (such as utility financing difficulties, state requirements, and labor and equipment delays) are beyond the reach of legislative remedies.

Whatever you decide on the issues discussed below, this bill will be controversial on the Hill and among private and public interest groups. Unless the coal strike has caused a substantial reversal of attitudes in Congress, we do not expect legislation to be enacted this year.

Many groups feel the legislation has symbolic as well as substantive implications.

- The nuclear industry is looking to the Administration for a sign of continuing support for nuclear power, even though the particular bill we propose does not satisfy them in every respect. They believe that the mere expression of intent to reduce leadtimes will improve the public attitude towards nuclear power.

- The environmental community will look to this bill as an indication of our "real" feelings about nuclear power--is it a supply of "last resort" or are we stronger supporters of nuclear power?

- Industrial users of energy will look to the bill as an indication of our seriousness in addressing the overall adequacy of energy supplies.

- The bill, along with your nominee for the fifth member of the Nuclear Regulatory Commission, will be regarded as reflecting the Administration's latest "position" on nuclear power. Attempts will be made to characterize the Administration as "pro- or anti-" nuclear based upon these two decisions.

Given the political difficulties that inevitably will be encountered, we also have considered the possibility of not sending legislation to the Congress. A new, separate study of the licensing process has not been done, and a bill is unlikely to be enacted this year.

On balance, however all of your advisors[1/] do recommend that we go forward with a bill this year for the following reasons:

1. The Administration has committed to do so.

1/ EPA and CEQ favor sending legislation forward if the changes to the draft bill which they have recommended are approved. Bob Strauss specifically has asked that he be recorded in favor of sending a bill forward, in addition to the other agencies noted in the memorandum.

2. A consensus within the Administration has been reached on all issues other than those presented to you in this memorandum.

3. Even though a bill probably will not be enacted this year, it would be useful to begin the process now so that we can get action in the next Congress.

4. The industry is counting on this bill as an expression of the Administration's interest in the continued viability of nuclear power.

The issues for decision are attached.

ISSUES FOR DECISION

ISSUE #1: Should the NRC be permitted to hold non-adjudicatory hearings on all issues?

BACKGROUND

The Atomic Energy Act ("AEA") requires that the NRC hold adjudicatory hearings on issues of public health and safety. This standard was enacted at the beginning of the development of the American nuclear industry, and it was felt that only adjudicatory hearings would be sufficient to fully explore areas which were in the developing stage as a new technology. That standard has never been changed. When the National Environmental Policy Act ("NEPA") was enacted, the NRC's review responsibilities were extended to need for power and environmental impact issues. NEPA itself does not require adjudicatory hearings on such issues. Other Federal and State agencies, faced with making NEPA determinations in other subject areas, do not routinely hold adjudicatory hearings, but rather follow the legislative-hearing format or some other type of public participatory procedure. The NRC, following the existing statutory dictate of the AEA for adjudicatory hearings, extended such procedures to its NEPA reviews, though such extension was not mandatory. It is agreed that adjudicatory hearings (a trial format) require significantly more time than legislative hearings (oral statements on the record, questioning by presiding official.)

A question has been raised as to the efficacy of or necessity for the current NRC practice of holding adjudicatory hearings for health and safety issues and for NEPA issues. All of the options listed below apply only to NRC proceedings. Issue #2 relates to whether or not NRC procedures should be specifically required in State hearings.

OPTION #1: Permit use of "hybrid" hearing procedures for health and safety issues and legislative hearing procedures for NEPA issues?

This option would use legislative hearings for the initial screening of health and safety issues. Those issues essential to the proceeding which cannot be resolved because of factual disputes would be resolved through adjudicatory procedures.

Proponents argue that this option recognizes the historical context in which adjudicatory hearings were originally enacted and why such hearings were extended by the NRC to cover NEPA issues. The development of standardized designs and a more comprehensive understanding of the nuclear technology reduce the requirements for adjudicatory hearings on all health and safety issues. A "hybrid procedure" would provide full opportunity for adjudicatory hearings on specific health and safety issues that are in dispute, but would permit less formal hearings for issues where a "trial" is unnecessary, thereby speeding the licensing process. The Senate Governmental Affairs Committee has recommended informal procedures wherever possible, and has endorsed "hybrid" procedures in those areas where suitable resolution may not be possible solely through informal procedures.

Proponents argue further that legislative hearings are adequate for making determinations on NEPA issues, as evidenced by the fact that current Federal and State NEPA reviews for facilities other than nuclear plants are adequately resolved in legislative hearings. Since potential envrionmental impacts of nuclear plants are comparable to those of other facilities, similar procedures should be adequate.

OPTION #2: Retain adjudicatory hearings for health and safety issues but allow legislative hearings for NRC NEPA review proceedings.

This option would retain the status quo (adjudicatory hearings) for hearings on health and safety issues but would permit legislative hearings for NRC NEPA review proceedings. However, the NRC could require adjudicatory hearings on specific factual issues relating to NEPA.

Proponents of this option argue that the technical complexity of health and safety issues are appropriate for adjudicatory procedures and that only a full formal hearing including the cross-examination of witnesses will assure the public's confidence in the decisions made on health and safety issues. This option also recognizes that legislative hearings are used by other Federal and State agencies for NEPA review proceedings and that, as noted in Option #1 above, comparable NEPA issues for nuclear plants can be resolved through legislative hearings.

Opponents of this option argue that adjudicatory hearings for health and safety issues, while appropriate and necessary twenty years ago, are no longer needed, and that legislative or "hybrid"-type procedures are appropriate for resolving such issues.

OPTION #3: Permit "hybrid" procedures to be used for all issues. This option would allow an initial screening of all issues through legislative hearings, with adjudicatory procedures to be employed at the discretion of the presiding officer for any factual issue in dispute.

This option argues that the "hybrid" concept, as recommended by the Senate Governmental Affairs Committee, should be employed whereever possible. It argues that although legislative hearings are preferable and the least time-consuming, factual issues may arise which cannot be resolved informally and that a mechanism should exist to provide for adjudicatory procedures, when needed.

This option is opposed by supporters of option #1, who argue that legislative hearings are sufficient, and that granting discretionary power to the predising officer creates too much uncertainty in the hearing process.

Supporters of option #4, however, argue that the "hybrid" does not offer enough assurance that all issues will be properly resolved because too many issues need adjudicatory hearings, specifically with regard to health and safety issues, and that public confidence requires adjudicatory hearings.

OPTION #4: Continue the use of adjudicatory hearings for both health and safety issues and for the NRC NEPA review proceedings.

This option argues that the status quo has served an appropriate role in the licensing process and that full formal hearings should continue to be required. It argues for the continued use of adjudicatory hearings for the NEPA review, even though such procedures are not mandated by NEPA itself.

Proponents argue that ...

Opponents of this option repeat the views expressed in options #1 and #3, in that the original premise for requiring adjudicatory hearings no longer exists and that mandatory adjudicatory hearings for the NEPA review process goes beyond the scope of NEPA itself.

#2 IN DELEGATING

ISSUE ~~#1:~~ ~~Should~~ Federal environmental impact statement responsibilities ~~be delegated~~ to states?

~~If delegated,~~ should we require that the states use procedures comparable to those ~~now~~ required of the NRC to carry out ~~this~~ THESE ~~responsibility?~~ RESPONSIBILITIES?

The ~~National Environmental Policy Act~~ (NEPA) requires the ~~Nuclear Regulatory Commission~~ NRC to prepare an Environmental Impact Statement (EIS) for each nuclear power plant. The NRC must:

- determine whether the power from the nuclear plant is needed;
- assess all reasonable alternative means of meeting power needs;
- assess the environmental effects of permitting the reactor vs. pursuing other alternatives; and
- make a balanced decision on whether the plant should be built.

Many states under their own laws also undertake environmental reviews, which duplicate NRC efforts.

The draft bill would authorize the NRC to delegate all or part of these environmental review responsibilities to a state or an authorized regional organization which has a program approved by NRC. States would not be required to accept this responsibility, although would be encourage d to do so. The NRC would retain responsibility for all health and safety determinations because of the technical complexity of these issues.

Delegation of NEPA responsiblity is intended to minimize state and federal duplication in the licensing process. This process, which recognizes state interests and expertise in siting and environmental reviews, hopefully will increase public participation and confidence in the licensing process.

The Governors have endorsed NEPA delegations, and all agencies agree that some type of state delegation would be a positive step. Many agencies are concerned, however, that unless we require delegation with procedures comparable to those now required at the federal level, substantive environmental protections now in place will be reduced.

The bill would establish nine specific standards for state performance of the NEPA responsibilities and would require the NRC to set guidelines for approval of state review programs. At issue is whether the three following procedural protections, now in place at the federal level, should be statutorily required at the state level or whether we should let states have more flexibility than is now required at the federal level.

1. Formal adjudicatory hearings with cross-examination for environmental issues.

2. Funding by the states for intervenors who could not otherwise afford to become a party to the proceeding (This will be required by this bill at the federal level--a change from current policy.)

3. Specific procedures for state "need for power" determinations.

~~(Items 1 and 2 would continue to be required of the NRC if a state chose not to accept delegation of responsibility.)~~ IF A STATE CHOSE NOT TO ACCEPT DELEGATION OF RESPONSIBILITY, ITEM 2 WOULD CONTINUE TO BE REQUIRED OF THE NRC, WHILE CONTINUATION OF ITEM 1 WOULD DEPEND UPON YOUR DECISION ON ISSUE 1.

Option #1: Provide states with the opportunity to assume the current NRC responsibility for environmental determinations and reviews without requiring comparable procedures.

DOE strongly opposes making delegations contingent on state adjudicatory hearings or state-provided intervenor funding. DOE believes that giving the NRC administrative authority to establish requirements for state programs is adequate protection. Mandating these procedures would be overly restrictive and would constitute Federal interference in state decision-making procedures. DOE also points out that (1) this bill would provide stronger procedural requirements than NEPA itself requires; and (2) the governors oppose mandatory intervenor funding at the state level. ~~It should be noted, however, that existing NRC procedures for carrying out NEPA require formal hearings, even though NEPA itself does not require this procedure.~~

~~Some governors have stated that they would not accept these new responsibilities if the three procedures listed above are required. It is unclear, however, whether this is just an expression of a preference or a real barrier to state participation.~~

DOE BELIEVES THAT WE WOULD BE IMPOSING ON THE STATES AN ACTION NOT REQUIRED BY THE UNDERLYING FEDERAL STATUTE (NEPA) AND NOT USED FOR OTHER PROJECT EVALUATIONS WHICH HAVE COMPARABLE OR GREATER ENVIRONMENTAL IMPACTS THAN NUCLEAR PLANTS.

IF THE ADMINISTRATION PROPOSED LEGISLATION TO REQUIRE STATES TO USE SPECIAL HEARING PROCEDURES AND INTERVENOR FUNDING, IT WOULD CONSTITUTE A STRONG FEDERAL INTERFERENCE IN STATE PROCEEDINGS, WITH A BROADER IMPACT THAN NUCLEAR PLANT SITING. THIS ACTION IS STRONGLY OPPOSED BY THE GOVERNORS.

Option #2: Delegation of NEPA-related responsibilities could occur only if states provide procedures comparable to those of the NRC. ~~Federal Government.~~

OR TO BE

This option would require states to use the same basic procedures as are now required when the NRC conducts environmental reviews. Those favoring this option believe that on-the-record (adjudicatory) hearings with cross-examination are needed for reliable, factual decision-making, and that the funding of public intervenors in these proceedings will assure greater participation and a more thorough airing of issues. They also believe that in light of the importance of the "need for power" and environmental determinations, NRC procedures need to be delegated along with the NRC responsibilities. If comparable procedures are not required the Administration COULD (would) be lowering the current procedural standards for the environmental determinations on nuclear power plants.

OR PROPOSED

Decision:

1. Delegation without requiring comparable procedures. ☐

   (Recommended by: DOE, Treasury)

2. Delegation if states provide comparable procedures. ☐

   (Recommended by: Stu, OMB, CEQ, OSTP, EPA Interior)

#3

ISSUE ~~#2~~ Should nuclear plant construction be allowed on pre-approved sites prior to the final "need for power" determination and environmental report update?

Under current NRC procedures, limited construction work on a reactor site is allowed prior to issuance of a construction permit. Before allowing this work, however, NRC (1) completes a full environmental review; (2) determines the "need for power" from the proposed plant; and, (3) determines the basic safety of a reactor at that site. A Limited Work Authority (LWA), which allows the utility to do some early construction work, can then be issued. The construction permit is issued only after NRC completes its safety review in its entirety.

The type of work that can be done under a LWA is substantial, and can result in expenditures of $50 and $100 million over 9 to 18 months. All early construction work done under a LWA is at the utility's risk; in the event that a construction permit is not issued, the utility customers or stockholders (as determined by that state public utility commission) must cover the sunk costs.

The draft bill provides early construction work similar to current practice in that: (1) NRC or the states must have completed a full environmental review, and (2) NRC must have determined the basic safety of a reactor at that site. However, under the draft bill the NRC (or state) determination of the specific "need for power" need not be made before construction activity begins. This is the main difference between the draft bill and current practice.

Under the draft bill, prior to the time that early construction is permitted, any given site will have received one general "need for power" review when a site is approved and "banked" for later use. However, as much as ten years could elapse between banking of the site and the decision to build a ~~plutonium~~ plant.

The issue is whether early construction should be allowed at a pre-approved site prior to (1) completion of the site-specific "need for power" determination and (2) an update of the site and plant environmental report. The draft bill does give both the state and the NRC authority to stop early construction for any reason, before these findings have been made.

Option #1: No limited site construction allowed prior to the site specific "need for power" determination and an environmental report update.

CEQ, Interior and EPA are concerned that an investment of $50-$100 million in reactor site construction could prejudice the NRC's or state's "need for power" determination and later operating license decisions. Major construction could occur prior to public scrutiny of the utility's power demand projects and other justification of the need for a plant. In

addition, little opportunity will exist to review environmental issues raised between the time the site was banked and the time that construction begins.

This option would eliminate authority to allow limited construction work on a banked site prior to a need for power determination. The public would thus be guaranteed an opportunity to review the site (in the "need for power" proceeding) before any construction could begin.

Option #2. Permit limited construction prior to the site-specific need for power determination.

The early construction provision could save from 6 to 12 months of plant licensing time, which represents from 12 to 33% of the time to be saved under the draft bill. ~~[While a utility could plan its applications in such a way as to minimize or eliminate this potential delay, not all utilities are likely to do so.]~~ This advantage of 6 to 12 months in the licensing time could result in power cost savings to consumers of $40 to $60 million per plant. In addition, the power replacement purchase costs associated with a six month delay could be as much as $25 million. On the other hand, should the "need for power" determination not be made positively, the consumers or stockholders would ultimately pay the $50 to $100 million spent on construction during this period.

The bill does allow the NRC or the affected state to prevent early construction if they wish for any reason. The bill requires that a notice of intent be filed with the NRC and the state six months prior to submission of a construction permit application, and also requires thirty days notice before actual construction begins. Those favoring this option believe that these notice provisions, coupled with discretionary authority to prevent early construction, are sufficient to protect the public's right to review environmental issues.

In addition, this provision for early site work is one of the main incentives for utilities to seek early site approval.

Decison:

Option #1: No limited site construction permitted prior to the completion of a site-specific "need for power" determination. /__/

(Recommended by: CEQ, Interior, EPA)

Option #2: Permit limited site construction prior to the completion of a site-specific "need for power" determination. /__/

(Recommended by: Stu, OMB, DOE, OSTP, Treasury, Commerce)

#4

ISSUE ~~#3~~: How difficult should it be for the public to obtain a hearing on a health, safety or environmental issue at later stages of the NRC licensing process?

Under current practice, any party to an NRC licensing proceeding can request a hearing at any stage of the proceeding simply by filing a petition which describes the party's interest and the issues it wants heard. The Commission then decides whether the issues raised need to be heard. These rules make it fairly easy for an interested party to raise issues at any time during the licensing process as long as the issue is well defined. Once the hearing issues are defined, NRC rules give the intervenor "discovery"--that is, access to any relevant information in the possession of the utility applicant.

The draft bill tries to get as many issues as possible raised early in the licensing process, so that there is less chance of delay due to hearings later in the process. Thus, certain provisions of the draft bill (see Option #1) would change current NRC practice by making it much more difficult to obtain a hearing at the operating licensing stage of the process.

All agencies agree with the general goal of an early airing of as many issues as possible. However, because the early hearings will be at the time a site is banked, 10-15 years could pass between the time of those early hearings and the operating license stage. Consequently, many agencies are concerned that the draft bill would make it too difficult to obtain a hearing at that later stage.

All agencies agree that hearings at the operating stage should generally be limited to new issues; the disagreement here is over what would be a "new issue."

All agencies also agree that new and significant information should permit the re-hearing of an old issue; the disagreement is over how difficult it should be for an intervenor to obtain the new information and how significant any new information would have to be to justify a hearing.

The two options are set forth below in order of difficulty, starting with the provisions in the current draft bill.

Option #1: MORE DIFFICULT

- A new issue would be one for which there had been "no prior opportunity" for hearing.
- ~~An intervenor could not be allowed access to utility records (discovery) to obtain new information.~~
- Any new information would have to be so significant that on its face it would make (facility) compliance with NRC law and regulation unlikely.

DOE believes that the opportunity for subsequent hearings should be as narrow as possible in order to encourage the early raising of issues and to limit potential delays in operating a plant.

Under the draft bill, "prior opportunity" would have existed if information on the issue was generally available--in the hearing record, in public files at the NRC, or in generally circulated literature--at the time of a previous hearing.

~~(The NRC can always raise issues itself and a matter even in the absense of the requisite showing by an intervenor.)~~

~~Industry strongly supports this limitation. They see it as reducing the possibility that a fully constructed facility could be prevented or delayed from being brought on line becuase of hearings on issues which could have been rasied earlier or which do not have a significant health and safety impact.~~

THIS PROPOSAL IN NO WAY LIMITS NRC'S AUTHORITY OR THE UTILITIES' RESPONSIBILITY TO MAINTAIN SAFETY STANDARDS. THE NRC CAN ALWAYS RAISE ANY ISSUE AND INTERVENORS CAN OBTAIN ADDITIONAL HEARINGS ON HEALTH AND SAFETY ISSUES WHENEVER A PROPER SHOWING CAN BE MADE. IN ADDITION, STATE PROCEEDINGS ARE NOT LIMITED ON ANY ISSUE.

DOE BELIEVES THE LIMITATION ON THE ABILITY TO REOPEN ISSUES IS CENTRAL TO THE PURPOSES OF THIS LEGISLATION. WITHOUT THIS LIMITATION, IT IS UNLIKELY THAT A UTILITY WOULD MAKE THE SUBSTANTIAL INVESTMENT REQUIRED TO HAVE A SITE APPROVED, FOR THERE WOULD BE NO ASSURANCE THAT IT COULD USE THAT SITE WHEN NEEDED. WITHOUT THIS LIMITATION IT IS UNLIKELY THAT A MANUFACTURER WOULD ATTEMPT TO LICENSE A STANDARDIZED DESIGN, FOR ISSUES COULD BE REOPENED EACH TIME A PLANT WAS TO BE CONSTRUCTED.

UNDULY RESTRICT THE AVAILABILITY OF HEARINGS AT SUBSEQUENT STAGES, On the other hand, opponents of this option argue that it would place an ~~undue burden on public intervenors,~~ since the existence of a "prior opportunity" might have been 10 or more years before. Since a petitioner would not have the right of discovery of information within the control of a utiltiy prior to establishing the existence of an issue or of new information, THE ~~this type of~~ showing would be even more difficult. ~~This option, it is argued, could weaken existing safety standards because of this major, new procedural threshold, and~~ environmental groups consequently would oppose this option.

Option #2: LESS DIFFICULT

- A new issue would be one which "had not been presented in a prior proceeding."

- ~~An intervenor could not be allowed access to utility records (discovery) to obtain new information.~~

- Any new information would have to be significant enough to persuade the NRC this facility compliance with NRC law and regulations would be unlikely.

This option relaxes the test from "no prior opportunity" to "not previously presented." If the issue had been presented in the context of a previous hearing, subsequent hearings generally could not be held to address this issue. However, an issue on which information generally had been available but which had not been raised in the NRC process could be the subject of a new hearing under this option. This would provide some incentive for the utility applicant to be sure that all known issues were raised in early proceedings., BUT WOULD ALSO PLACE A BURDEN ON THE UTILITY TO ENSURE THAT EVEN OBVIOUS ISSUES AND ISSUES RESOLVED INFORMALLY WERE PRESENTED.

In addition, this option would relax the test for showing the existence of new information on issues which had been previously presented. NRC's present criteria for permitting hearings on new information--discussed in the introduction to this issue--would be used under this option. If an intervenor had an apparently legitimate contention, a hearing would be convened. The petitioner then would have discovery rights to find additional information (as under current NRC rules), and the merits of all information available on this issue would be addressed in a hearing.

Under this option a showing of a likely violation of commission regulations would be enough to raise an issue for hearing at any stage of the licensing process. ~~Because this showing is less difficult then Option #1~~ DOE contends that this option ~~could needlessly prolong the licensing process~~ IS NO BETTER THAN THE UNACCEPTABLE STATUS QUO.

Decision:

Option #1: Difficult /___/

(Recommended by: DOE)

Option #2: Less Difficult. /___/

(Recommended by: CEQ, Interior, OMB, OSTP, EPA. Stu has no preference between Options #1 and #2.)

ISSUE #5: Should the NRC be permitted to grant interim operating authority upon finding:

a) that there is an "urgent public need or emergency," or
b) that it is "in the national interest?"

Background

The NRC does not now have authority to permit interim operation of a nuclear plant prior to the issuance of an operating license. At one time there was such statutory authority, but the requirements were so burdensome that the provision was only used once, before it lapsed by its own terms in 1973.

The bill would permit the NRC to authorize interim operation prior to completion of all required hearings. The purpose of this provision is to permit operation of a fully-constructed nuclear plant after the hearings have been completed on issues relating public health and safety.

The proposed options pertain to what finding the NRC should be required to make for this authority to be employed.

OPTION #1: Require the NRC to find that operation is necessary because of an "urgent public need or emergency."

This standard would have the effect of limiting use of the provision to extremely grave situations. Failure of other power sources or need to conserve alternate sources of energy would presumably not be sufficient to meet this standard.

Proponents of this option argue that operation should only be permitted prior to the completion of any hearing in emergency situations. The purpose of hearings is to raise and resolve issues, and operation should only be permitted prior to resolution of all issues in very limited situations.

Opponents of this option argue that the hearing will have been completed on all health and safety issues and that it would be extremely difficult to meet this standard in almost any case.

OPTION #2: Require the NRC to find that operation is necessary "in the national interest".

This standard would permit the provision to be employed in more cases than the first, that is, would be a lower threshhold to meet. This standard could be met in situations where there was a power shortfall, or if there was a need to replace power supplied by other energy sources (i.e., oil, gas, coal,or hydro).

Proponents of this option argue that there is a need for a usable provision for interim operation prior to completion of hearings on environmental, anti-trust or other non-health and safety issues. This would be one of the few provisions in the bill that could have an impact on plants currently in the NRC process rather than just on future plants.

Opponents of this option argue that it would undermine the validity of the whole hearing process to permit operation based on this weaker standard prior to completion of hearings.

DECISION:

1. Require a finding of "urgent public need or emergency"
(Recommended by:)

2. Require a finding of "in the national interest"
(Recommended by: DOE)

ISSUE ~~#4~~ #6: Should a provision be added to the proposed bill that would require that the NRC make certain findings with respect to the permanent disposal of nuclear wastes?

Should the NRC be explicitly prohibited from licensing new nuclear power plants if the findings are negative?

The lack of any demonstration of a safe and environmentally sound method for disposing of hazardous high level nuclear wastes is the largest problem associated with the expanded use of nuclear power. The National Energy Plan projected an increased use of nuclear power and also announced the Administration's commitment to the availability of adequate nuclear waste storage facilities.

A few months ago, DOE established a Task Force to undertake a comprehensive review of the nation's waste management policy and program. The Task Force report will be released later this month, and the remainder of 1978 will be devoted to interagency and public review and discussion, leading to a final Administration position by the end of the year. Industry and environmental groups agree that the waste management issue is one of the major uncertainties limiting new nuclear plant orders.

Since the draft bill will have the effect of encouraging the use of nuclear power to meet the NEP energy supply objectives, some agencies believe that the bill should contain positive legislative steps to give further assurance that waste disposal can be accomplished without risk to public health and safety. They argue that this is necessary to make the bill consistent with the NEP and other Administration policies on waste management. Others do not believe legislative steps are needed, although they place high priority on dealing with the waste issue.

The following points also bear on your consideration of this issue:

- The State of California passed legislation in 1976 which prohibits nuclear plant siting until there is "demonstrated technology" for permanent disposition of high level nuclear wastes. [~~(This state legislation goes further in preventing nuclear licensing than would any of the options presented below.)~~] Several other states are considering similar requirements, although referenda to adopt such provisions have been defeated in many states.

leave in

- The Federal Government has had a poor track record in handling the waste disposal problem, contributing to public doubts about whether these wastes can be disposed of safely.

An actual waste repository cannot be licensed by the NRC and in operation before 1985. Thus, it is impossible actually to demonstrate waste disposal within the next few years. Some believe that in lieu of this demonstration, a firm determination must be made that technical solutions to the waste problem are available in order to restore public confidence that nuclear wastes can be disposed of safetly. Frank Press, however, has pointed out that all non-Government, serious technical reviews of the waste management issue, including those by the National Academy of Science, the American Physical Society and the Ford Foundation Mitre Nuclear Power Study, have agreed that the nuclear wastes can be safely contained. He believes that the likelihood of a new finding that these wastes cannot be contained is low. However, Frank cannot make a similar statement with respect to the adequacy of the present federal program to demonstrate safe disposal of wastes. (DOE is now reviewing and developing a new Administration program.)

The issues for your determination are: (1) What, if any, NRC duties should be mandated in the licensing bill? (2) What, if any, future explicit restrictions on nuclear plant licensing should be mandated by the bill?

Option #1: Do not raise the nuclear waste issue either administratively or legislatively in connection with the draft bill.

While the Administration would continue ongoing efforts on the waste management, no new steps, either administrative or legislative, would be taken. The Administation could reiterate its previously determined plans to have interagency and public reviews of its waste management policy and programs. Both this and Option #2 avoid any Executive Branch curtailment of nuclear reactor licensing on the grounds of no resolution of the waste storage issue. Of course, under both Options #1 and #2, NRC retains the authority to curtail licensing on its own.

Option #2: Administratively request NRC to determine whether there are reasonable assurances that nuclear wastes can be disposed of safely.

This option would be implemented as follows:

- Issue an Executive Order establishing a DOE-chaired Interagency Committee on Nuclear Waste Management to develop a comprehensive plan by September 30, 1978, for the storage and permanent disposal of commercial high level nuclear wastes. This would be very similar to what is planned by DOE.

- DOE would, as presently planned, produce by December 31, 1979, a final Generic Environmental Impact Statement (GEIS) on commercial nuclear wastes, including an evaluation of all methods for disposing high level wastes and the means for implementing these.

- NRC would review the GEIS with public participation. If it wanted to do so, it would report whether, in its opinion, wastes can be handled safely. (NOTE: Since the NRC is an independent agency, it cannot be bound to take any action by Executive Order. The present chairman, however, has indicated his personal willingness to proceed in this manner.)

This option would not legally affect NRC's licensing of nuclear plants. However, as a practical matter, if NRC determines that wastes cannot be handled safely, NRC may well decide or be required by the courts to stop issuing licenses. This risk is also present under Option #1. This option would require NRC to review the feasibility of various waste disposal methods, but it would not require a review of the DOE plan to implement those methods.

Option #3: Legislatively require NRC to determine: (1) whether there are reasonable assurances that nuclear wastes can be disposed of safely, and (2) whether a safe and timely plan exists to dispose of nuclear wastes.

This option would be implemented as follows:

- DOE would produce a final Generic Environmental Impact Statement (GEIS) on nuclear wastes by December 31, 1979.

- NRC would be required to review the environmental impact statement, to hold public hearings and to determine:

  (1) whether nuclear wastes can be safely contained until decayed to harmless levels; and

  (2) whether a safe and timely plan exists for the disposal of nuclear wastes.

- If the Commission cannot make either finding, NRC would be required to report to the President and to the Congress on how to ensure the continued protection of the public health and welfare.

This option would demonstrate legislatively that the Administration wants a full public review of nuclear waste disposal, but would not require a cessation of licensing in the event of negative findings. Nonetheless, any negative finding on whether waste can safely be contained as in Option #2 likely would result in no new licenses be granted. Environmental groups would see this option as a positive and meaningful step, although they would favor the stronger steps proposed under Option #4.

Establishing in law the requirement for a finding that waste can be disposed of safely could move utilities to delay any plant orders until after the finding. Therefore, the industry has opposed including the waste issue in the bill, although they are encouraging us to move foward with current plans for resolving the issue. IN ADDITION, THE NRC MIGHT BE PRECLUDED FROM PERFORMING OTHER WASTE MANAGEMENT EVALUATIONS UNTIL THIS REVIEW WAS COMPLETED. THIS COULD DELAY THE PROGRAM BY SEVERAL YEARS.

Option #4: In addition to the provisions in Option #3, mandate the termination of nuclear plant licensing if the NRC's determination is negative with respect to either question.

This option would require that all licensing of nuclear plants cease after four years if the NRC cannot find (1) that nuclear wastes can be disposed of safely, and (2) that a plan exists to store nuclear wastes. This would send the strongest possible signal that the Administration puts a high priority on solving the waste management problem before relying on nuclear power as a future energy resource. ~~[Nevertheless, this option is still not as restrictive on nuclear plant licensing as the California law, which halts all licensing until waste disposal has been demonstrated.]~~ Leave in

Similar to Option #3, this option could result in a delay in any new plant orders until this finding is made.

Decision:

Option #1: Do not raise the nuclear waste issue in connection with the draft bill. /__/

(Recommended by: DOE, Commerce (STATE))

Option #2: Administratively request NRC to determine whether there are reasonable assurances that nuclear wastes can be disposed of safely. /__/

(Recommended by: Stu, Treasury)

Option #3: Legislatively require NRC to determine: (1) whether there are reasonable assurances that nuclear wastes can be disposed of safely, and (2) whether a safe and timely plan exists to dispose of nuclear wastes. /__/

(Recommended by: OMB, OSTP, EPA, Interior)

Option #4: In addition to the provisions in Option #3, mandate the termination of nuclear plant licensing if the NRC's determination is negative with respect to either question. /__/

(Recommended by: CEQ)

#7

ISSUE ~~XX~~: Should a provision on conservation and renewable energy resource alternatives be added to the bill?

In the President's Energy Address to Congress and in other Presidential statements, a commitment was expressed to rely first on energy conservation to deal with the energy crisis, then on coal with an increased use of solar and other renewable energy sources, and finally on nuclear power. In campaign statements the President referred to nuclear power as "a last resort."

CEQ has proposed mandating that the NRC or the states be required to determine that no feasible conservation or renewable energy resources are available to meet specific power needs before issuing a license to build a nuclear plant. This proposal would take the current NEPA process a large step further, by mandating a preference for conservation and renewable energy resources if they constitute a feasible alternative to a proposed reactor. The alternative would have to be economical and within the utilities' ability to implement.

Option #1: Require a mandatory finding that no conservation or renewable resources alternatives exist.

CEQ believes its proposal would stimulate the development of conservation, solar and other renewable resource technologies more quickly than would occur under current licensing practices. CEQ argues that the proposal does not prohibit necessary nuclear power expansion; it only places a higher priority on other alternatives as compared with the nuclear option.

While this option is conceptually interesting, some agencies have expressed strong reservations about its implementation.

- The NRC does not have expertise in the non-nuclear power area and as currently constituted would have limited ability to address these issues.

- Arriving at definitive findings on the availability of alternatives, particularly with advancing technologies and difficulties in projecting conservation-related savings, will be very difficult. Ambiguity or lack of definitive findings would increase the likelihood of litigation over particular reactor license applications.

Option #2: Do not require a mandatory finding that conservation or renewable alternatives exist.

DOE argues that NEPA already requires an analysis of all conservation and renewable resource alternatives prior to authorizing nuclear plant construction. If any of these are shown to be more economical than the proposed nuclear plant and could be implemented, then the nuclear plant probably would not, as a practical matter, be approved, even without the addition of this language in the bill.

In addition, the proposal would impose a difficult burden on utilities to prove a negative fact, i.e., that no conservation or renewable energy alternative exists within all reasonable steps that a utility could take. The provision would also add time to the nuclear licensing process, directly counter to the principal objective of the DOE bill.

Decision:

Option #1: Require a mandatory conservation and renewable alternatives finding. /__/

(Recommended by: CEQ, Interior)

Option #2: Do not require a mandatory conservation and renewable alternatives finding. /__/

(Recommended by: Stu, OMB, OSTP, EPA, DOE, Treasury, Commerce)

Eizenstat and OMB Comment:

It is possible to encourage the NRC and the states to take these alternatives into account without going as far as CEQ proposes. We do not believe that Option #1 is administratively practical. We would recommend that DOE provide technical assistance in evaluating non-nuclear alternatives and that the Administration, through its public statements, encourage full consideration of conservation and renewable resource options. The letter transmitting this bill to Congress could highlight our commitment to developing alternatives and to providing incentives for their commercial use.

THE WHITE HOUSE
WASHINGTON

cc to

KLH 2/27 pm

Buzz

Department of Energy
Washington, D.C. 20585

February 27, 1978

MEMORANDUM FOR THE PRESIDENT

FROM: JAMES R. SCHLESINGER

SUBJECT: PROPOSED NUCLEAR SITING AND LICENSING ACT

In your April 20, 1977, energy message you committed to cutting the 10-12 year lead time for nuclear power plants in half. After seven months of discussion, review and compromise, the proposed Nuclear Siting and Licensing Act (NSLA) is ready to be submitted to the Congress, pending your decision on five issues.

The significance of this legislation cannot be overestimated. In the last 26 months there were only four new orders for nuclear plants. Even utilities noted for their past commitment to the use of nuclear power have publicly stated that they would not order additional units until the current uncertainties in the siting and licensing process were substantially reduced. In short, nuclear power is no longer a reasonable energy choice.

The proposed NSLA will have little impact on nuclear power plants now in the pipeline, but will have a significant impact on newly planned facilities to come on-line in the late 1980's. The current time of 10-12 years to get a plant on-line could be shortened to 6-1/2 years. This would be accomplished by building standardized plants on pre-approved sites, and reducing uncertainties by limiting the opportunity to reopen issues that do not adversely affect public health and safety.

The electricity crisis caused by the coal strike clearly shows the need for diversity of energy sources. A majority of the Governors have strongly supported the concepts contained in the bill since an early draft was distributed in August 1977. Additional support and interest has come from States "saved" by nuclear power during the coal strike.

The current version of the bill is a good first step towards restoring the nuclear option, though I personally believe the proposal has been weakened significantly during the process of inter-agency review and could be strenthened before submission to Congress. In general, your Cabinet supports strong licensing legislation, although some of your advisors have objected to certain concepts in the bill.*

As a result of this process, several significant features of the initial proposal have been substantially weakened or completely eliminated. Among the most valuable concepts which would strengthen the bill are the following:

- o The expanded use of legislative hearings, rather than requiring adjudicatory hearings (i.e., trial format), which can result in lengthy, repetitive procedures. The National Environmental Policy Act (NEPA) does not require any specific procedure and most Federal and State reviews currently use informal legislative hearings. The Senate Governmental Affairs Committee has recommended the use of informal procedures whenever possible, and this philosophy was incorporated into the Department of Energy (DOE) Authorization Act.

- o Permitting NRC to issue interim operating licenses whenever it is in the national interest. If a standardized plant design is used, interim licensing authority should be available after all health and safety issues are resolved.

- o Limiting the number and scope of required hearings. The utilities and intervenors should be encouraged to consider and raise issues early in the licensing process. Once these issues could have been considered, the opportunity to subsequently raise or reopen these issues should be limited. Many of today's proceedings are needlessly filled with issues that either could have been raised earlier or have already been resolved in other hearings. This issue is raised in part by Issue 3 below.

The omission of these concepts has resulted in a minimum proposal to permit nuclear power to be a viable energy option. Additional compromises on the five issues requiring your decision would severely weaken this minimum proposal.

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* Agriculture, Commerce, Justice, Labor, Treasury and Ambassador Strauss all support a strong bill; Interior has expressed some reservations; CEQ and EPA have been the principal advocates for a more limited bill.

The five issues that require your decision are:

Issue 1: Should the legislation dictate procedures to the States?

All agencies agree that delegation to the States of NRC review responsibilities should be permitted for non-health and -safety issues, if there exists an NRC-approved State program. Some agencies, however, want the legislation to specifically require the States to use adjudicatory hearings for environmental review of nuclear sites, and the need for power determination. In effect, we would be imposing on the States an action not required by the underlying Federal Statute (NEPA) and not used for other project evaluations which have comparable or greater environmental impacts than nuclear plants.

If the Administration proposed legislation to require States to use adjudicatory hearings and intervenor funding, it would constitute a strong Federal interference in State proceedings, with a broader impact than nuclear plant siting. This action is strongly opposed by the Governors.

Issue 2: Should limited construction be permitted on pre-approved sites?

Limited construction should be permitted on pre-approved sites before a formal site-specific determination of need for power. This authority could save a minimum of 6-12 months of critical path time, and reduce the cost of power. Since the bill permits the State or the NRC to prohibit or limit such construction for any reason, abuses are unlikely, while time and dollar savings are significant. Without this provision, the incentives for utilities to pre-select sites would be substantially reduced.

Issue 3: What standards should be established for obtaining a hearing after adjudicatory hearings on the standardized design and site have been held?

To reduce the uncertainties of the siting and licensing process, it is essential to provide a high degree of finality on old or insignificant issues and not permit hearings on such issues to

delay bringing plants on-line. This essential objective can be accomplished by allowing subsequent hearings only on (1) new issues for which no opportunity for a hearing was previously available, or (2) old issues affecting the public health and safety or the environment, where significant new information has become available.

This proposal in no way limits NRC's authority or the utilities' responsibility to maintain safety standards. The NRC can always raise any issue and intervenors can obtain additional hearings on health and safety issues whenever a proper showing can be made. In addition, State proceedings are not limited on any issue.

The limitation on the ability to reopen issues is central to the purposes of this legislation. Without this limitation, it is unlikely that a utility would make the substantial investment required to have a site approved, for there would be no assurance that it could use that site when needed. Without this limitation it is unlikely that a manufacturer would attempt to license a standardized design, for issues could be reopened each time a plant was to be constructed.

Issue 4: Should the bill require NRC to make specific findings regarding nuclear waste disposal?

After your approval last November, I established a DOE Task Force to comprehensively review our waste management program. Its report will be completed by March 6, with the rest of 1978 devoted to interagency review and public discussions to arrive at an Administration program by the end of the year. We will also issue a draft Generic Environmental Impact Statement in 1978 for public review, and will submit a waste storage facility license application to the NRC.

CEQ wants to require legislatively that the NRC hold formal public hearings on the DOE program and affirmatively conclude that it is an effective and safe program. This proposal would be self-defeating by (1) delaying NRC's ability to review DOE's license application and possibly precluding NRC

from issuing statements or guidelines for waste disposal programs, and (2) inhibiting utilities from ordering new nuclear plants because of the uncertainty in the NRC proceeding. This would occur despite the fact that a majority of independent scientific authorities agree that nuclear waste can be safely contained.

Issue 5: Should a provision on conservation and renewable energy alternatives be added to the bill?

In considering a nuclear power plant, NEPA currently requires a balanced consideration of alternatives to that plant, such as conservation or renewable energy resources. The proposed bill does not change this requirement. CEQ wants to significantly expand both the intent and purpose of NEPA by requiring a specific negative finding that these two alternatives are not in fact available. This would place a significant burden on the utilities, create new legal obstacles, and add further uncertainty and delay to the process.

THE WHITE HOUSE
WASHINGTON

Patti

Pls confirm that Kitty has a cc of the attached

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF SCIENCE AND TECHNOLOGY POLICY
WASHINGTON, D.C. 20500

March 8, 1978

MEMORANDUM

TO: Rick Hutcheson

FROM: Phil Smith

SUBJECT: OSTP Comments on the Nuclear Siting and Licensing Reform Legislation Decision Paper

We have reviewed the revised decision paper. The draft accurately reflects our recommendations on issues 3 and 6, but we urge that our recommendations on the following issues be recorded as follows:

- Issue 1 deals with the question whether NRC should be permitted to hold non-adjudicatory hearings. We support option 3, which permits hybrid procedures in all cases.

- Issue 2 deals with the delegation on environmental impact responsibilities to states. Our preference has not been accurately recorded. As indicated in the memo of February 10, from Ted Greenwood and Dick Meserve to Joe Kearney, we support option 2 (requiring states to establish procedures comparable to NRC procedures) with respect to adjudicatory hearings and "need-for-power," but option 1 (not requiring comparable procedures) for intervenor funding. We would suggest that a footnote be added to our vote as currently recorded stating:

  "OSTP supports option 2 with respect to procedures for environmental issues and need for power, but feels that requiring the states to assume the burdens of intervenor funding is an excessive intrusion by the Federal government into the prerogatives and financial obligations of states."

- Issue 4 deals with hearings at the later stages of the licensing process. Our support is to be recorded for option 1, which establishes a strict barrier to such hearings, and not for option 2. We are changing our vote on this issue on the basis of our further deliberations with Frank Press.

- Issue 5 deals with interim operating authority. We support option 1, which would allow operation in a case of urgent public need or emergency. The "national interest" standard in option 2 is too vague.

We would also like to make the following comments about the text of the decision paper:

- The text of option 3 of issue 6, which deals with the nuclear waste problem, now includes the following statement:

  > "In addition, the NRC might be precluded from performing other waste management evaluations until this review was completed. This could delay the program by several years."

  We urge that this statement be deleted, as we feel it is vague and inaccurate. The justification for the assertion is not altogether clear. If the thought is that a court may construe any statutory requirement along the lines of option 3 so as to prevent other waste management evaluations until the review is completed, we disagree. Careful draftmanship of the new licensing bill, perhaps including an express disclaimer of such a construction, should be adequate to prevent such a problem from arising.

- I am sure you know that both the General Accounting Office and Congressional Research Service have recently concluded that state reviews and capital formation problems are a greater barrier to nuclear power plant licensing than Federal review procedures. The legislation, of course, can only improve the process of review at the Federal level and, in fact, provides the option for states to become more involved than currently. For this reason there is some possibility that the beneficial effects of the proposed licensing reform may be offset by a growing complexity of state and local regulation, and, continued corporate capital problems. It might be appropriate, therefore, to be somewhat more cautious in the introductory section of the paper that describes the beneficial effects of the legislation.

We have conveyed these comments to Kitty Schirmer.

cc: Dr. Frank Press

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
722 JACKSON PLACE, N. W.
WASHINGTON, D. C. 20006

March 8, 1978

MEMORANDUM FOR STU EIZENSTAT
JIM MCINTYRE

FROM: Charles Warren

SUBJECT: Latest Proposed Revisions of Nuclear Licensing Legislation Decision Memorandum

The policies proposed as additional options by the Department of Energy go further in watering down public hearing procedures than any previous Administration has gone.

Bills to "reform" the licensing of commercial nuclear reactors were proposed by the Nixon Administration, and considered by the old pro-nuclear Joint Committee on Atomic Energy. None of the Republican proposals, except one, suggested that public hearing procedures be weakened or that review of environmental issues be short-circuited. The one exception was a bill proposed by the Atomic Energy Commission in 1972, which would have short-circuited environmental reviews in connection with the issuance of "interim" operating licenses. The AEC bill was killed by Senators Jackson and Baker. The proposed standard ("in the national interest") for interim licensing of reactors is vaguer than any the old Joint Committee tolerated.

In addition, the new options proposed by DOE would not add efficiency to the licensing process. Environmental reviews have caused licensing delays in less than 2 percent of the cases, according to NRC records. Utilities have cited environmental problems as the cause of less than 1 percent of the delays in bringing plants on line. With regard to interim operation, utilities have not sought such permission because the need for it could not be shown.

In sum, I believe the new DOE proposals risk substantial political damage and would bring virtually no licensing benefits.

The DOE editorial changes in the discussion of other issues delete some significant facts, mischaracterize others, and in one instance delete an argument which is adverse to the Department's position. I believe that you had produced a fair, objective and informative memorandum. In my judgment, the DOE's editorial changes would misinform the President on some key points.

I will submit our detailed comments shortly.

cc: Rick Hutcheson

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
722 JACKSON PLACE, N. W.
WASHINGTON, D. C. 20006

March 9, 1978

MEMORANDUM FOR STU EIZENSTAT
JIM MCINTYRE

FROM: Charles Warren

SUBJECT: Proposed Revisions in Nuclear Licensing Bill Decision Memorandum

Enclosed are the Council on Environmental Quality's responses to the changes proposed by Secretary Schlesinger in the Presidential decision memorandum on the nuclear licensing bill.

Our comments on DOE's two new issues correct factual errors and present the opposing viewpoint. We also propose simplifying the options under new issue #1, to clarify the choice for the President.

With regard to DOE's editorializing in the remainder of the memo, we strongly recommend returning to the 2/25/78 Eizenstat-McIntyre version, without further change. The earlier version was fair and accurate, and was accepted by all agencies. If, however, you decide to consider the proposed DOE editing, I would urge a working meeting to discuss a final text. Our proposed revisions are included in the attached marked-up draft.

cc: Rick Hutcheson

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

ACTION

MEMORANDUM FOR: THE PRESIDENT

FROM: JIM MCINTYRE/STU EIZENSTAT

SUBJECT: Nuclear Siting and Licensing Reform Legislation

The Department of Energy (DOE) is proposing legislation to reform nuclear power plant siting and licensing. All agencies support the basic concepts of the bill:

- early review and "banking" of potential nuclear sites,
- standardized plant designs,
- provision for combined construction permit/operating license applications,
- increased state role in environmental and need for power determinations, and
- funding of intervenors in nuclear licensing proceedings.

This memorandum reviews the relationship of this bill to the Administration's current nuclear energy policy, outlines changes proposed in licensing procedures and requests your decision on issues in disagreement among the agencies.

Background

The major elements of the Administration's stated nuclear policy are:

- Some increase in the use of nuclear power from current generation light water reactors will be needed to meet energy needs, even with strong emphasis on conservation, coal and renewable resources.
- Plutonium recycle and breeder reactors will be indefinitely deferred because of their proliferation risks and their economic uncertainties.
- Safety assurances of nuclear power plants must be improved.
- The nuclear licensing process should be reformed to reduce licensing time while continuing to assure that plants are built and operated in a manner that is safe, environmentally sound, and consistent with national security objectives.

- Safe disposal of nuclear waste should be demonstrated at the earliest practical time.

This legislative proposal should be viewed in the context of the Administration's overall nuclear policy.

DOE is proposing legislation which could reduce the time required to license a plant from 10-12 years to 6-8 years, although this reduction will not occur immediately. Use of standardized design and pre-approval of sites (site banking), not hearing procedures, are the main factors affecting leadtimes, and these two innovations cannot take full effect for 6 to 10 years

Nuclear Plant Planning and Construction Leadtimes

Nuclear power plant construction now costs from $700 million to $1 billion. Up to 40 percent of this cost is interest and inflation encountered during the licensing and construction period. The length and cost of this have been factors in the deferral or cancellation of many planned units. Reduced leadtimes could provide earlier and cheaper nuclear power.

The nuclear power plant licensing and construction process currently is structured as follows:

1. The utility planning and preapplication period begins with a utility decision to build a nuclear reactor and ends with NRC acceptance of the application for a construction permit. During this period a utility chooses a site, prepares an environmental impact report, and prepares a preliminary plant design report. (2 years)

2. During the construction permit review, the NRC reviews safety and environmental data furnished by the utility and a formal trial-type public hearing (called an adjudicatory hearing) is held. The utility must also meet and follow specific technical standards set by the NRC for plant construction. (2 years)

3. During the construction period a utility finalizes the reactor design, builds the plant, and performs pre-operation testing. (6-8 years)

4. During the operating license review, the NRC reviews the final plant design, a final safety report and an updated environmental report. This review runs concurrent with the last phase of plant construction. (during final 2 years of construction)

The DOE bill could shorten the leadtime period by 3 to 4 years through the following changes in the current process.

- Authorize an early site approval process ("site banking") allowing utilities to get NRC approval of a nuclear site up to 10 years before a decision to build a particular plant. A utility could complete all environmental studies and have these sites accepted well before deciding to build a plant at the site. This could save 1 1/2 years.

- Allow limited construction work to begin on previously approved sites before a construction permit is issued. This could save one year. Issue #2 discusses this proposal in more detail.

- Encourage the use of standardized plant designs which NRC has reviewed and approved in prior proceedings. This could reduce construction time to about 5-1/2 years by assuring that construction begins on the basis of a "final" rather than preliminary design. (Standardized designs could be used without this legislation, but it is generally agreed that legislation will encourage this practice.)

There are now 50,000 MWe of installed nuclear capacity in the U.S. (13% of present U.S. electricity generation). An additional 170,000 MWe of nuclear capacity is now in the licensing and construction process and will come on line between now and 1990. The draft bill will not affect these plants since they were begun without use of pre-approved sites or standardized design. Although it is difficult to predict how many new plants will be ordered as a result of the changes proposed by this bill, it is clear that only a few will be planned unless the process is improved. Existing uncertainties in the areas of waste disposal, licensing, spent fuel handling, financing, and public attitudes have slowed new nuclear plant orders. This bill, coupled with our programs on waste disposal and spent fuel storage, should help remove many of these uncertainties.

Agencies disagree on the following new licensing procedures proposed by DOE:

1. Criteria for delegation of the National Environmental Policy Act (NEPA) review responsibilities to states.

2. Permitting limited construction work to begin on a pre-approved site prior to a determination by the state or the NRC of the specific need for power from the proposed plant.

3. Criteria for holding public hearings at later stages of the licensing and construction processes.

Furthermore, some of your advisors strongly believe that any Administration bill on nuclear licensing should also

4. require NRC to make a finding on whether a solution exists to the nuclear waste management problem, and

5. require a finding that no conservation and/or renewable energy alternatives to the nuclear power plant exist, i.e., make nuclear power in fact the "last resort," before licensing a particular plant. This would place a strong preference for renewable energy and conservation alternatives.

Political Considerations

Any proposal to change the nuclear licensing process will be controversial because it inevitably triggers the anti-nuclear/pro-nuclear debate. Furthermore, there is wide disagreement, even within the industry, on which

particular parts of the process cause delay, and definitive answers are not available. Finally, many factors which influence leadtimes (such as utility financing difficulties, state requirements, and labor and equipment delays) are beyond the reach of legislative remedies.

Whatever you decide on the issues discussed below, this bill will be controversial on the Hill and among private and public interest groups. Unless the coal strike has caused a substantial reversal of attitudes in Congress, we do not expect legislation to be enacted this year.

Many groups feel the legislation has symbolic as well as substantive implications.

- The nuclear industry is looking to the Administration for a sign of continuing support for nuclear power, even though the particular bill we propose does not satisfy them in every respect. They believe that the mere expression of intent to reduce leadtimes will improve the public attitude towards nuclear power.

- The environmental community will look to this bill as an indication of our "real" feelings about nuclear power--is it a supply of "last resort" or are we stronger supporters of nuclear power?

- Industrial users of energy will look to the bill as an indication of our seriousness in addressing the overall adequacy of energy supplies.

- The bill, along with your nominee for the fifth member of the Nuclear Regulatory Commission, will be regarded as reflecting the Administration's latest "position" on nuclear power. Attempts will be made to characterize the Administration as "pro- or anti-" nuclear based upon these two decisions.

Given the political difficulties that inevitably will be encountered, we also have considered the possibility of not sending legislation to the Congress. A new, separate study of the licensing process has not been done, and a bill is unlikely to be enacted this year.

On balance, however all of your advisors[1/] do recommend that we go forward with a bill this year for the following reasons:

1. The Administration has committed to do so.

1/ EPA and CEQ favor sending legislation forward if the changes to the draft bill which they have recommended are approved. Bob Strauss specifically has asked that he be recorded in favor of sending a bill forward, in addition to the other agencies noted in the memorandum.

2. A consensus within the Administration has been reached on all issues other than those presented to you in this memorandum.

3. Even though a bill probably will not be enacted this year, it would be useful to begin the process now so that we can get action in the next Congress.

3. The industry is counting on this bill as an expression of the Administration's interest in the continued viability of nuclear power.

The issues for decision are attached.

ISSUES FOR DECISION

ISSUE #1: Should Federal environmental impact statement responsibilities be delegated to states?

If delegated, should we require that the states use procedures comparable to those now required of the NRC to carry out this responsibility?

The National Environmental Policy Act (NEPA) requires the Nuclear Regulatory Commission to prepare an Environmental Impact Statement (EIS) for each nuclear power plant. The NRC must:

- determine whether the power from the nuclear plant is needed;
- assess all reasonable alternative means of meeting power needs;
- assess the environmental effects of permitting the reactor vs. pursuing other alternatives; and
- make a balanced decision on whether the plant should be built.

Many states under their own laws also undertake environmental reviews, which duplicate NRC efforts.

The draft bill would authorize the NRC to delegate all or part of these environmental review responsibilities to a state or an authorized regional organization which has a program approved by NRC. States would not be required to accept this responsibility, although would be encouraged to do so. The NRC would retain responsibility for all health and safety determinations because of the technical complexity of these issues.

Delegation of NEPA responsiblity is intended to minimize state and federal duplication in the licensing process. This process, which recognizes state interests and expertise in siting and environmental reviews, hopefully will increase public participation and confidence in the licensing process.

The Governors have endorsed NEPA delegations, and all agencies agree that some type of state delegation would be a positive step. Many agencies are concerned, however, that unless we require delegation with procedures comparable to those now required at the federal level, substantive environmental protections now in place will be reduced.

The bill would establish nine specific standards for state performance of the NEPA responsibilities and would require the NRC to set guidelines for approval of state review programs. At issue is whether the three following procedural protections, now in place at the federal level, should be statutorily required at the state level or whether we should let states have more flexibility than is now required at the federal level.

1. Formal adjudicatory hearings with cross-examination for environmental issues.

2. Funding by the states for intervenors who could not otherwise afford to become a party to the proceeding (This will be required by this bill at the federal level--a change from current policy.)

3. Specific procedures for state "need for power" determinations.

(Items 1 and 2 would continue to be required of the NRC if a state chose not to accept delegation of responsibility.)

Option #1: Provide states with the opportunity to assume the current NRC responsibility for environmental determinations and reviews without requiring comparable procedures.

DOE strongly opposes making delegations contingent on state adjudicatory hearings or state-provided intervenor funding. DOE believes that giving the NRC administrative authority to establish requirements for state programs is adequate protection. Mandating these procedures would be overly restrictive and would constitute Federal interference in state decision-making procedures. DOE also points out that (1) this bill would provide stronger procedural requirements than NEPA itself requires; and (2) the governors oppose mandatory intervenor funding at the state level. (It should be noted, however, that existing NRC procedures for carrying out NEPA require formal hearings, even though NEPA itself does not require this procedure.)

Some governors have stated that they would not accept these new responsibilities if the three procedures listed above are required. It is unclear, however, whether this is just an expression of a preference or a real barrier to state participation.

Option #2: Delegation of NEPA-related responsibilities could occur only if states provide procedures comparable to those of the Federal Government.

This option would require states to use the same basic procedures as are now required when the NRC conducts environmental reviews. Those favoring this option believe that on-the-record (adjudicatory) hearings with cross-examination are needed for reliable, factual decision-making, and that the funding of public intervenors in these proceedings will assure greater participation and a more thorough airing of issues. They also believe that in light of the importance of the "need for power" and environmental determinations, NRC procedures need to be delegated along with the NRC responsibilities. If comparable procedures are not required the Administration would be lowering the current procedural standards for the environmental determinations on nuclear power plants.

Decision:

1. Delegation without requiring comparable procedures. /__/

   (Recommended by: DOE, Treasury) & Jody

2. Delegation if states provide comparable procedures. /__/

   (Recommended by: Stu, OMB, CEQ, OSTP, EPA Interior)

ISSUE #2: Should nuclear plant construction be allowed on pre-approved sites prior to the final "need for power" determination and environmental report update?

Under current NRC procedures, limited construction work on a reactor site is allowed prior to issuance of a construction permit. Before allowing this work, however, NRC (1) completes a full environmental review; (2) determines the "need for power" from the proposed plant; and, (3) determines the basic safety of a reactor at that site. A Limited Work Authority (LWA), which allows the utility to do some early construction work, can then be issued. The construction permit is issued only after NRC completes its safety review in its entirety.

The type of work that can be done under a LWA is substantial, and can result in expenditures of $50 and $100 million over 9 to 18 months. All early construction work done under a LWA is at the utility's risk; in the event that a construction permit is not issued, the utility customers or stockholders (as determined by that state public utility commission) must cover the sunk costs.

The draft bill provides early construction work similar to current practice in that: (1) NRC or the states must have completed a full environmental review, and (2) NRC must have determined the basic safety of a reactor at that site. However, under the draft bill the NRC (or state) determination of the specific "need for power" need not be made before construction activity begins. This is the main difference between the draft bill and current practice.

Under the draft bill, prior to the time that early construction is permitted, any given site will have received one general "need for power" review when a site is approved and "banked" for later use. However, as much as ten years could elapse between banking of the site and the decision to build a plutonium plant.

The issue is whether early construction should be allowed at a pre-approved site prior to (1) completion of the site-specific "need for power" determination and (2) an update of the site and plant environmental report. The draft bill does give both the state and the NRC authority to stop early construction for any reason, before these findings have been made.

Option #1: No limited site construction allowed prior to the site specific "need for power" determination and an environmental report update.

CEQ, Interior and EPA are concerned that an investment of $50-$100 million in reactor site construction could prejudice the NRC's or state's "need for power" determination and later operating license decisions. Major construction could occur prior to public scrutiny of the utility's power demand projects and other justification of the need for a plant. In

addition, little opportunity will exist to review environmental issues raised between the time the site was banked and the time that construction begins.

This option would eliminate authority to allow limited construction work on a banked site prior to a need for power determination. The public would thus be guaranteed an opportunity to review the site (in the "need for power" proceeding) before any construction could begin.

Option #2. Permit limited construction prior to the site-specific need for power determination.

The early construction provision could save from 6 to 12 months of plant licensing time, which represents from 12 to 33% of the time to be saved under the draft bill. While a utility could plan its applications in such a way as to minimize or eliminate this potential delay, not all utilities are likely to do so. This advantage of 6 to 12 months in the licensing time could result in power cost savings to consumers of $40 to $60 million per plant. In addition, the power replacement purchase costs associated with a six month delay could be as much as $25 million. On the other hand, should the "need for power" determination not be made positively, the consumers or stockholders would ultimately pay the $50 to $100 million spent on construction during this period.

The bill does allow the NRC or the affected state to prevent early construction if they wish for any reason. The bill requires that a notice of intent be filed with the NRC and the state six months prior to submission of a construction permit application, and also requires thirty days notice before actual construction begins. Those favoring this option believe that these notice provisions, coupled with discretionary authority to prevent early construction, are sufficient to protect the public's right to review environmental issues.

In addition, this provision for early site work is one of the main incentives for utilities to seek early site approval.

Decison:

Option #1: No limited site construction permitted prior to the completion of a site-specific "need for power" determination. /___/

(Recommended by: CEQ, Interior, EPA)

Option #2: Permit limited site construction prior to the completion of a site-specific "need for power" determination. /___/

(Recommended by: Stu, OMB, DOE, OSTP, Treasury, Commerce) & Jody

ISSUE #3: How difficult should it be for the public to obtain a hearing on a health, safety or environmental issue at later stages of the NRC licensing process?

Under current practice, any party to an NRC licensing proceeding can request a hearing at any stage of the proceeding simply by filing a petition which describes the party's interest and the issues it wants heard. The Commission then decides whether the issues raised need to be heard. These rules make it fairly easy for an interested party to raise issues at any time during the licensing process as long as the issue is well defined. Once the hearing issues are defined, NRC rules give the intervenor "discovery"--that is, access to any relevant information in the possession of the utility applicant.

The draft bill tries to get as many issues as possible raised early in the licensing process, so that there is less chance of delay due to hearings later in the process. Thus, certain provisions of the draft bill (see Option #1) would change current NRC practice by making it much more difficult to obtain a hearing at the operating licensing stage of the process.

All agencies agree with the general goal of an early airing of as many issues as possible. However, because the early hearings will be at the time a site is banked, 10-15 years could pass between the time of those early hearings and the operating license stage. Consequently, many agencies are concerned that the draft bill would make it too difficult to obtain a hearing at that later stage.

All agencies agree that hearings at the operating stage should generally be limited to new issues; the disagreement here is over what would be a "new issue."

All agencies also agree that new and significant information should permit the re-hearing of an old issue; the disagreement is over how difficult it should be for an intervenor to obtain the new information and how significant any new information would have to be to justify a hearing.

The two options are set forth below in order of difficulty, starting with the provisions in the current draft bill.

Option #1: MORE DIFFICULT

- A new issue would be one for which there had been "no prior opportunity" for hearing.
- An intervenor could not be allowed access to utility records (discovery) to obtain new information.
- Any new information would have to be so significant that on its face it would make (facility) compliance with NRC law and regulation unlikely.

DOE believes that the opportunity for subsequent hearings should be as narrow as possible in order to encourage the early raising of issues and to limit potential delays in operating a plant.

Under the draft bill, "prior opportunity" would have existed if information on the issue was generally available--in the hearing record, in public files at the NRC, or in generally circulated literature--at the time of a previous hearing.

(The NRC can always raise issues itself and a matter even in the absense of the requisite showing by an intervenor.)

Industry strongly supports this limitation. They see it as reducing the possibility that a fully constructed facility could be prevented or delayed from being brought on line becuase of hearings on issues which could have been rasied earlier or which do not have a significant health and safety impact.

On the other hand, opponents of this option argue that it would place an undue burden on public intervenors, since the existence of a "prior opportunity" might have been 10 or more years before. Since a petitioner would not have the right of discovery of information within the control of a utiltiy prior to establishing the existence of an issue or of new information, this type of showing would be even more difficult. This option, it is argued, could weaken existing safety standards because of this major, new procedural threshold, and environmental groups consequently would oppose this option.

Option #2: LESS DIFFICULT

- A new issue would be one which "had not been presented in a prior proceeding."
- An intervenor could not be allowed access to utility records (discovery) to obtain new information.
- Any new information would have to be significant enough to persuade the NRC this facility compliance with NRC law and regulations would be unlikely.

This option relaxes the test from "no prior opportunity" to "not previously presented." If the issue had been presented in the context of a previous hearing, subsequent hearings generally could not be held to address this issue. However, an issue on which information generally had been available but which had not been raised in the NRC process could be the subject of a new hearing under this option. This would provide some incentive for the utility applicant to be sure that all known issues were raised in early proceedings.

In addition, this option would relax the test for showing the existence of new information on issues which had been previously presented. NRC's present criteria for permitting hearings on new information--discussed in the introduction to this issue--would be used under this option. If an intervenor had an apparently legitimate contention, a hearing would be convened. The petitioner then would have discovery rights to find additional information (as under current NRC rules), and the merits of all information available on this issue would be addressed in a hearing.

Under this option a showing of a likely violation of commission regulations would be enough to raise an issue for hearing at any stage of the licensing process. Because this showing is less difficult then Option #1, DOE contends that this option could needlessly prolong the licensing process.

Decision:

Option #1: Difficult /___/

(Recommended by: DOE) & Jody

Option #2: Less Difficult. /___/

(Recommended by: CEQ, Interior, OMB, OSTP, EPA. Stu has no preference between Options #1 and #2.)

ISSUE #4: Should a provision be added to the proposed bill that would require that the NRC make certain findings with respect to the permanent disposal of nuclear wastes?

Should the NRC be explicitly prohibited from licensing new nuclear power plants if the findings are negative?

The lack of any demonstration of a safe and environmentally sound method for disposing of hazardous high level nuclear wastes is the largest problem associated with the expanded use of nuclear power. The National Energy Plan projected an increased use of nuclear power and also announced the Administration's commitment to the availability of adequate nuclear waste storage facilities.

A few months ago, DOE established a Task Force to undertake a comprehensive review of the nation's waste management policy and program. The Task Force report will be released later this month, and the remainder of 1978 will be devoted to interagency and public review and discussion, leading to a final Administration position by the end of the year. Industry and environmental groups agree that the waste management issue is one of the major uncertainties limiting new nuclear plant orders.

Since the draft bill will have the effect of encouraging the use of nuclear power to meet the NEP energy supply objectives, some agencies believe that the bill should contain positive legislative steps to give further assurance that waste disposal can be accomplished without risk to public health and safety. They argue that this is necessary to make the bill consistent with the NEP and other Administration policies on waste management. Others do not believe legislative steps are needed, although they place high priority on dealing with the waste issue.

The following points also bear on your consideration of this issue:

- The State of California passed legislation in 1976 which prohibits nuclear plant siting until there is "demonstrated technology" for permanent disposition of high level nuclear wastes. (This state legislation goes further in preventing nuclear licensing than would any of the options presented below.) Several other states are considering similar requirements, although referenda to adopt such provisions have been defeated in many states.

- The Federal Government has had a poor track record in handling the waste disposal problem, contributing to public doubts about whether these wastes can be disposed of safely.

An actual waste repository cannot be licensed by the NRC and in operation before 1985. Thus, it is impossible actually to demonstrate waste disposal within the next few years. Some believe that in lieu of this demonstration, a firm determination must be made that technical solutions to the waste problem are available in order to restore public confidence that nuclear wastes can be disposed of safetly. Frank Press, however, has pointed out that all non-Government, serious technical reviews of the waste management issue, including those by the National Academy of Science, the American Physical Society and the Ford Foundation Mitre Nuclear Power Study, have agreed that the nuclear wastes can be safely contained. He believes that the likelihood of a new finding that these wastes cannot be contained is low. However, Frank cannot make a similar statement with respect to the adequacy of the present federal program to demonstrate safe disposal of wastes. (DOE is now reviewing and developing a new Administration program.)

The issues for your determination are: (1) What, if any, NRC duties should be mandated in the licensing bill? (2) What, if any, future explicit restrictions on nuclear plant licensing should be mandated by the bill?

Option #1: Do not raise the nuclear waste issue either administratively or legislatively in connection with the draft bill.

While the Administration would continue ongoing efforts on the waste management, no new steps, either administrative or legislative, would be taken. The Administation could reiterate its previously determined plans to have interagency and public reviews of its waste management policy and programs. Both this and Option #2 avoid any Executive Branch curtailment of nuclear reactor licensing on the grounds of no resolution of the waste storage issue. Of course, under both Options #1 and #2, NRC retains the authority to curtail licensing on its own.

Option #2: Administratively request NRC to determine whether there are reasonable assurances that nuclear wastes can be disposed of safely.

This option would be implemented as follows:

- Issue an Executive Order establishing a DOE-chaired Interagency Committee on Nuclear Waste Management to develop a comprehensive plan by September 30, 1978, for the storage and permanent disposal of commercial high level nuclear wastes. This would be very similar to what is planned by DOE.

- DOE would, as presently planned, produce by December 31, 1979, a final Generic Environmental Impact Statement (GEIS) on commercial nuclear wastes, including an evaluation of all methods for disposing high level wastes and the means for implementing these.

- NRC would review the GEIS with public participation. If it wanted to do so, it would report whether, in its opinion, wastes can be handled safely. (NOTE: Since the NRC is an independent agency, it cannot be bound to take any action by Executive Order. The present chairman, however, has indicated his personal willingness to proceed in this manner.)

This option would not legally affect NRC's licensing of nuclear plants. However, as a practical matter, if NRC determines that wastes cannot be handled safely, NRC may well decide or be required by the courts to stop issuing licenses. This risk is also present under Option #1. This option would require NRC to review the feasibility of various waste disposal methods, but it would not require a review of the DOE plan to implement those methods.

Option #3: Legislatively require NRC to determine: (1) whether there are reasonable assurances that nuclear wastes can be disposed of safely, and (2) whether a safe and timely plan exists to dispose of nuclear wastes.

This option would be implemented as follows:

- DOE would produce a final Generic Environmental Impact Statement (GEIS) on nuclear wastes by December 31, 1979.

- NRC would be required to review the environmental impact statement, to hold public hearings and to determine:

  (1) whether nuclear wastes can be safely contained until decayed to harmless levels; and

  (2) whether a safe and timely plan exists for the disposal of nuclear wastes.

- If the Commission cannot make either finding, NRC would be required to report to the President and to the Congress on how to ensure the continued protection of the public health and welfare.

This option would demonstrate legislatively that the Administration wants a full public review of nuclear waste disposal, but would not require a cessation of licensing in the event of negative findings. Nonetheless, any negative finding on whether waste can safely be contained as in Option #2 likely would result in no new licenses be granted. Environmental groups would see this option as a positive and meaningful step, although they would favor the stronger steps proposed under Option #4.

Establishing in law the requirement for a finding that waste can be disposed of safely could move utilities to delay any plant orders until after the finding. Therefore, the industry has opposed including the waste issue in the bill, although they are encouraging us to move foward with current plans for resolving the issue.

Option #4: In addition to the provisions in Option #3, mandate the termination of nuclear plant licensing if the NRC's determination is negative with respect to either question.

This option would require that all licensing of nuclear plants cease after four years if the NRC cannot find (1) that nuclear wastes can be disposed of safely, and (2) that a plan exists to store nuclear wastes. This would send the strongest possible signal that the Administration puts a high priority on solving the waste management problem before relying on nuclear power as a future energy resource. Nevertheless, this option is still not as restrictive on nuclear plant licensing as the California law, which halts all licensing until waste disposal has been demonstrated.

Similar to Option #3, this option could result in a delay in any new plant orders until this finding is made.

Decision:

Option #1: Do not raise the nuclear waste issue in connection with the draft bill. /___/

(Recommended by: DOE, Commerce) & Jody

Option #2: Administratively request NRC to determine whether there are reasonable assurances that nuclear wastes can be disposed of safely. /___/

(Recommended by: Stu, Treasury)

Option #3: Legislatively require NRC to determine: (1) whether there are reasonable assurances that nuclear wastes can be disposed of safely, and (2) whether a safe and timely plan exists to dispose of nuclear wastes. /___/

(Recommended by: OMB, OSTP, EPA, Interior)

Option #4: In addition to the provisions in Option #3, mandate the termination of nuclear plant licensing if the NRC's determination is negative with respect to either question. /___/

(Recommended by: CEQ)

ISSUE #5: Should a provision on conservation and renewable energy resource alternatives be added to the bill?

In the President's Energy Address to Congress and in other Presidential statements, a commitment was expressed to rely first on energy conservation to deal with the energy crisis, then on coal with an increased use of solar and other renewable energy sources, and finally on nuclear power. In campaign statements the President referred to nuclear power as "a last resort."

CEQ has proposed mandating that the NRC or the states be required to determine that no feasible conservation or renewable energy resources are available to meet specific power needs before issuing a license to build a nuclear plant. This proposal would take the current NEPA process a large step further, by mandating a preference for conservation and renewable energy resources if they constitute a feasible alternative to a proposed reactor. The alternative would have to be economical and within the utilities' ability to implement.

Option #1: Require a mandatory finding that no conservation or renewable resources alternatives exist.

CEQ believes its proposal would stimulate the development of conservation, solar and other renewable resource technologies more quickly than would occur under current licensing practices. CEQ argues that the proposal does not prohibit necessary nuclear power expansion; it only places a higher priority on other alternatives as compared with the nuclear option.

While this option is conceptually interesting, some agencies have expressed strong reservations about its implementation.

- The NRC does not have expertise in the non-nuclear power area and as currently constituted would have limited ability to address these issues.

- Arriving at definitive findings on the availability of alternatives, particularly with advancing technologies and difficulties in projecting conservation-related savings, will be very difficult. Ambiguity or lack of definitive findings would increase the likelihood of litigation over particular reactor license applications.

Option #2: Do not require a mandatory finding that conservation or renewable alternatives exist.

DOE argues that NEPA already requires an analysis of all conservation and renewable resource alternatives prior to authorizing nuclear plant construction. If any of these are shown to be more economical than the proposed nuclear plant and could be implemented, then the nuclear plant probably would not, as a practical matter, be approved, even without the addition of this language in the bill.

In addition, the proposal would impose a difficult burden on utilities to prove a negative fact, i.e., that no conservation or renewable energy alternative exists within all reasonable steps that a utility could take. The provision would also add time to the nuclear licensing process, directly counter to the principal objective of the DOE bill.

Decision:

Option #1: Require a mandatory conservation and renewable alternatives finding. /___/

(Recommended by: CEQ, Interior)

Option #2: Do not require a mandatory conservation and renewable alternatives finding. /___/

(Recommended by: Stu, OMB, OSTP, EPA, DOE, Treasury, Commerce) & Jody

Eizenstat and OMB Comment:

It is possible to encourage the NRC and the states to take these alternatives into account without going as far as CEQ proposes. We do not believe that Option #1 is administratively practical. We would recommend that DOE provide technical assistance in evaluating non-nuclear alternatives and that the Administration, through its public statements, encourage full consideration of conservation and renewable resource options. The letter transmitting this bill to Congress could highlight our commitment to developing alternatives and to providing incentives for their commercial use.

Interior and CEQ Comment:

CEQ & Interior believe it both important and practical to establish at the earliest opportunity a policy preference for conservation and renewable energy at the time of deciding on indivudual plants. California, for example, currently does so. We believe this bill is an excellent opportunity to do so.

ADDITIONAL STAFF
COMMENTS

Additional Staff Comments

Congressional Liaison:

Senate: Virtually every Senator, except those who totally oppose nuclear power, is strongly supportive of reducing the siting and licensing period. Any reduction in the time required to bring a plant on stream would be welcomed. The only complaint we will hear from pro-nuclear Senators is that we have not reduced the period enough.

House: House energy people (Teague, Flowers) still consider this Administration anti-nuclear. Anything we can do to cut lead-time on nuclear siting and licensing would be good. The only House Members who would oppose shortening licensing time would be the no-growth, anti-nuclear ones.

Jordan: no comment

Powell: I believe strong labor support can be marshalled for these positions (he has checked his preferences). Those who oppose all nuclear power have shown little interest in practical alternatives -- witness their at best ambivalent posture on our energy plan.

CEA: concurs with Stu on all issues.

On the nuclear waste issue (#4), we are particularly concerned that the proposal might increase the uncertainty about the future of nuclear power. In either Option #3 or #4 (see p. 12) utilities might delay making commitments until after NRC determination was made. This could offset any favorable effect of expedited licensing. After you have made a decision, we think you should ask for an assessment of the induced delays resulting from implementation of the nuclear waste decision.

We concur that steps should be taken to accelerate the process of building nuclear plants. However, shortening the construction time will contribute but a modest amount to cheaper electricity.

State, Agriculture, Commerce, Labor (not actively involved in preparing the legislation): believe the nuclear licensing bill should go forward to Congress. State supports the options favored by DOE; the other agencies took no specific positions on individual options.

ID 781048 THE WHITE HOUSE

WASHINGTON

DATE: 25 FEB 78

FOR ACTION:

INFO ONLY: HAMILTON JORDAN — FRANK MOORE (LES FRANCIS)
JODY POWELL — JACK WATSON
FRANK PRESS — CHARLES WARRE
THE VICE PRESIDENT — CHARLES SCHULTZE

SUBJECT: REVISED EIZENSTAT MCINTYRE MEMO RE NUCLEAR SITING AND LICENSING REFORM LEGISLATION

+ RESPONSE DUE TO RICK HUTCHESON STAFF SECRETARY (456-7052) +
+ BY: +

ACTION REQUESTED: FOR INFORMATION

STAFF RESPONSE: ( ) I CONCUR. ( ) NO COMMENT. ( ) HOLD.

PLEASE NOTE OTHER COMMENTS BELOW:

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF SCIENCE AND TECHNOLOGY POLICY
WASHINGTON, D.C. 20500

3114 File 10481

MAR 28 1978

MEMO TO: Rick Hutcheson

FROM: Frank Press FP

SUBJECT: Nuclear Licensing Bill - Presidential Decision Memorandum

You should know that in the Decision Memorandum on the Nuclear Licensing Bill sent to the President, the OSTP recommendations were incorrectly reported on two of the issues. This was an unfortunate error that I hope will not recur. By the attached memo I have informed others of this mistake.

Attachment

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF SCIENCE AND TECHNOLOGY POLICY
WASHINGTON, D.C. 20500

MAR 28 1978

MEMORANDUM

TO: Stu Eizenstat
Eliot Cutler
Jack O'Leary
Joe Hendrie
Charles Warren
Doug Costle

FROM: Frank Press FP

SUBJECT: The Nuclear Licensing Bill

You should know for your records that two OSTP recommendations were incorrectly recorded on the Decision Memorandum that went to the President. In issue #4, which dealt with the difficulty of obtaining hearings on the health, safety, and environmental issues at the later stages of the NRC licensing process, we requested that our recommendation be changed from the less difficult to the more difficult option. Instead our recommendation was changed on issue #3, which dealt with initial plant construction prior to the final need for power determination from the less stringent to the more stringent option.

cc: Rick Hutcheson